

Framework of the Indictment by the Korean Prosecution Team
Manila Forum July 2000

This paper is to present the outlines of the Korean Indictment and to make suggestions to solve some of the questions which may arise in preparing for the Trial.

Form of the Indictment

The Indictment may take the following form:

The Women's International War Crimes Tribunal 2000
for the Trial of Japanese Military Sexual Slavery

The Prosecution Team of Korea

Against

Japanese Emperor Hirohito and Other Individuals

&

[Application Instituting Proceedings

Against the Governments of Japan and Other States]

Then it may start as follows:

The Korean Prosecution Team, pursuant to the authority under Article 11 of the Charter Women's International War Crimes Tribunal 2000 for the Trial of Japanese Sexual Slavery, charges:

The accused then Japanese Emperor Hirohito and other individuals listed below ordered, incited, assisted, or otherwise participated in acts of sexual slavery by establishing and maintaining so-called 'comfort stations' in various parts of the Asia-Pacific region in the course of the Chino-Japanese War and the Second World War in which hundreds of thousands of Korean women had been forcibly enlisted as so-called 'comfort women' and subjected them to sexual slavery by committing such acts as rape and other forms of sexual violence, sexual slavery, maiming, mutilation, torture, killing and inhumane and cruel treatment, as set forth below.

The Korean Prosecution Team requests the Tribunal to adjudge and declare:

- (i) the Government of Japan is responsible for the Japanese military sexual slavery in the violations of international law and liable, among others, to provide reparation including apology, compensation and punishment of those responsible;
- (ii) other States are also under the obligation to take measures necessary to suppress international crimes in connection with the Japanese military sexual slavery, to respect and to ensure human rights of victims of these crimes, and to take steps for the full realization of their human rights.

Outline of Indictment [and Application]

The following gives the table of contents, tentatively agreed, short descriptions of the proposed Indictment.

Introduction

- background of the Women's War Crimes Tribunal - jurisdictional basis of the Tribunal
- question of prosecution of dead persons – question of trial *in absentia*

Part I Individual Criminal Responsibility

Part. differently

1. Victims – Women under the Japanese Colonial Domination

Social background and origin of Korean 'Comfort Women' – Conditions of women in the Colonial Society - Korean attitude toward prostitution and 'chastity' ideology – Racial discrimination policy of the Japanese authorities – Analysis of Victims: Age, Marital Status, Occupation, Education, Place of Birth, Growth, Forceful Conscription

Korean women and girls victimized by the Japanese sexual slavery were drawn regardless of their social classes with the exception of the uppermost in the strata of the colonial society. The social and familial status of women in Korea had been very low in general reflecting the agrarian character of the Korean society where men were deemed to be a principal source of economic power.

In the early colonial period, the conclusion of the Land Survey Project by the Japanese colonialists in particular dissolved the traditional economic structure of Korea. Coupled with the expansion of the Japanese Imperialism into China in the 1930s, a number of peasants had been driven to move to Manchuria and Japanese immigrants quickly filled the vacuum. The Chino-Japanese War had further deteriorated the economic and living conditions of the Korean people. The existence of a huge number of uprooted people, however, did not lead the family to sell their daughters as prostitutes in any appreciable degree. The attitude of the Korean population affected by the Confucianism and the patriarchal system had been more than hostile toward prostitution and trafficking of women.

Worse still, after the Japanese Imperial government proclaimed the Act of the State General Mobilization in 1938, the colonial people were compelled to contribute their human and material resources to the Japanese war efforts. The colonial government in Korea forcefully conscripted millions of Korean people as laborers and soldiers till the end of the colonial occupation. This system of forceful conscription provided the background for the enlistment of the Korean women as 'comfort women'.

2. Crimes – the Japanese Military Sexual Slavery

(1) Forceful Conscription of 'Comfort Women' in Korea

"Virgin recruitment"

a. The System of the Japanese Domination of Korea

Background

Persecution on racial grounds

background

b. The Imperialist War of Japan and the Colony: Control and Conscription

- Conscription of Forced Laborers, Soldiers and 'Comfort Women'

c. The establishment and maintenance of the Japanese military 'comfort women' system

- role of the Japanese military in the establishment and maintenance of the Japanese military 'comfort women' system - status of 'comfort women' in the Japanese military structure: whether forming part of the military or civilian accompanying the military forces

The system of the Japanese military sexual slavery is currently known to originate from the Shanghai conflict of 1932 when the Japanese military started to set up 'comfort stations'. Deep rooted particularly in the governmental policy on prostitution in the modernization of Japan, the system evolved to such an extent to run 'comfort stations' wherever the Japanese military conducted imperialist wars. The Japanese Imperial Army conscripted in a forceful manner a great number of women from Korea, then the colony of Japan, as well as other occupied territories to serve as 'comfort women'

d. Criminality of the Forceful Conscription of the Korean 'Comfort Women'

(i) Definition of 'forceful conscription'

(ii) Modalities of forceful conscription: deception, kidnapping, trafficking in women and other cases

- General Analysis of Victims (detailed information attached in the Annexes)
- Exemplary Cases: KIM BOK-DONG (deception), KIM GUN-JA (deception), SONG PAN-IM (deception, able to recollect the name of the conscriptor, military exercise in the transportation ship escorted by the Japanese warships), KIMBOK-SUN etc.

(iii) The civilian operations and the cooperation of the Colonial Authorities

(iv) Transportation of Korean 'Comfort Women' and the Involvement of the Japanese government, the military, and the Colonial Authorities

KIMBOK-SUN – Arabira Maru (transportation ship) – Rangoon, Burma

e. Conclusion: Charges (or Counts)

e.g., the officials of the Japanese Government, the Consul of the Shanghai Consulate, the commanders of the Japanese Army in Shanghai, the Governor-in-General of Korea, the Chief of the Headquarter of the Japanese Army Stationing in Korea, the civilian operations of 'comfort stations'

- Obstacles and difficulties in identifying the perpetrators due to the destruction of materials, silence of victims as well as perpetrators, limited access to the war time

deportation

archives etc.

(2) Crimes committed in 'Comfort Stations'

(Charges/Counts shall be attached to each category below.)

CC No. 10

a. Systematic and Continuous Rapes

(i) The system of 'comfort stations'

- regional allocation of 'comfort stations' (map) – Military units of establishment – Location of 'comfort station' (exemplary maps) – Construction of 'comfort station' – Regulations of 'Comfort Stations' – Time, Rates, Terms, medical examination etc. – provision of contraceptives (Sakku) by the military forces – 'military coupon' – Different types of 'comfort stations' – 'comfort stations' directly run by the military – 'comfort stations' under the military control – designated 'comfort stations'

In addition to the cases involving Korean victims, Kim Bok-dong, Kim Gun-ja, Song Pan-im (able to name the civilian operator of the CS), the Korean team is considering the possibility of indictments in relation to the 'comfort stations' in Burma (testimonies of KIMBOK-SUN, ~~US~~ archives), Raboul (testimony of SONG Pan-im, ~~US~~ archives) and Okinawa. ~~the Allied~~

(ii) Repetitiveness of rapes

-rapes committed during forceful conscription – Continuous character of rapes in 'comfort station' – period of forceful detention in 'comfort stations' – Analysis of victims testimonies

b. Enslavement

- deprivation of freedom of movement – living conditions at 'comfort stations' – discrimination – inhumane and cruel treatment – drugging – forced labor: cooking, laundering, nursing etc. – 'sexual exploitation' – language barriers – foreign terrain
- KIM Bok-dong: applied for nurse aid, yet conscripted – Kangtong area – names of the commanders – movements of 'comfort women' forced to follow the troops they were subjected to, e.g. from Kantong, Hong Kong, Singapore, to Sumatra

c. Forced Pregnancy

KIM Gun-Ja – names of the commanders in Northern China

d. Forced Abortion and Infanticide

KIM Gun-Ja

e. Sterilization

e.g. injection of mercury and '606', KIM Gun-Ja

f. Contraction of Venereal Diseases

* Extermination

KIM Gun-Ja

forms of

g. Battery, Maiming, and other violence

h. Murder

withdrawal

(3) Crimes committed in the Immediate Aftermath of the Second World War

a. Abandonment in the theater of war

3124 return

KIM Gun-Ja and other Korean 'comfort women' still living in China

b. Murder

mass killing

KIMBOK-SUN – defeat of the JMF and her evacuation with Haruko (Korean CW from Kyung-sang Province), Kimiko (from Jeon-ra Province) in Burma, December 1944

- Other testimonies

c. Destruction of Evidence relating to Korean 'comfort women'

- Consider whether defamation case is possible against Huzioka Nobukasu (Professor of the Tokyo University), Nisii Kanzi (Professor of the Electric Communications ?), Kohayasi Yosinori (cartoonist) and other right wing groups

d. Concealment, Distortion and Denial of the Crimes of the Japanese Military Sexual Slavery

- liason meeting of the Japanese Army at Itsigayatai in 15 August 1945 to give an oral instruction to destroy important secret information received from the Department of Army – similar order by Tamura Hiroshi to do likewise material relating to prisoners of war

- considering the alleged suppression by Okuno Seisuke, former Minister of Education, of significant materials with Hara Bonfee, Director of the Asian Women's Fund, all around Japan in consultation with the Army and the Navy

3. Sufferings of Victims of the Japanese Military Sexual Slavery

(1) Direct Injury

(i) Physical Sufferings directly arising out of the Japanese Military Sexual Slavery

(ii) Mental Sufferings

psychological harm

- Post-Traumatic Stress Disorder (PTSD) etc.

(2) Continuous Suffering after their return to Korea

Adverse psychological effects from experience of Japanese military sexual slavery - Speech disorder - identity crisis - loss of self respect and self confidence - melancholy - heavy reliance on painkillers and other medicines -

* (Rhonda) how the trauma passed to next generation

tobacco and/or alcohol addiction - nightmares - anti-Japanese sentiment
Difficulties in social rehabilitation - broken family ties - social stigma - obstacles of having normal marital life resulting, e.g. from loss of reproductive capability - deprivation of means of earning of livelihood - poverty - analysis of victims

4. Application of the Law

(1) Applicable Law

a. Prohibition of Slavery

b. Minimum human rights standards

c. International Humanitarian Law

d. The Ground of the Application of International Humanitarian Law to Korea: the nature of the Japanese domination of Korea

- no existence of war between Korea and Japan - whether the situation during the Russo-Japanese War of 1904 constituted 'military occupation' for the application of the law of war - the effect of the 1905 Treaty purporting to deprive the Korean Imperial Government of the power to conduct foreign affairs - a treaty concluded under duress - the continuance of *de facto* domination of Korea by Japan - the unlawfulness of the 1910 Treaty - *de facto* military occupation if not *de jure* - the continuous application of the law of war to Korea

(2) Application of International Law to the Japanese Military Sexual Slavery

- a. crimes against humanity - evidences for state policy
- emphasis of genocidal character of the crimes
- b. war crimes
- c. attempt, instigation, abet, aid etc.

presence in each count

(3) Examination and Exclusion of Possible Defenses on the Basis of Law

a. statutory limitations

b. superior order

(dead persons - Tokyo defense)

1907 Hag. IV Art 52 report

Part II State Responsibility

1. Allegation of Facts

2. Applicable Law

Treaties

3. Responsibility of Japan