

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

Preamble

*The International Organizing Committee, composed of organizations from the offending country (Japan), organizations from areas where people were victimized (South Korea, North Korea, China, Taiwan, the Philippines, Indonesia, Malaysia, and others), and an International Advisory Committee (comprising eminent scholars and human rights activists),*

*Witnessing* the passage of the 20th century without any justice done to women victims of sexual slavery committed by the Japanese Military in various Asian countries under its colonial domination and military occupation before and during the Second World War, being one of the most horrendous forms of wartime sexual violence known in this century,

*Witnessing also* that violence against women, especially during armed conflicts, continues to be unabated in many parts of the world today,

*Noting* that violence against women has received further international attention through the Vienna Declaration adopted at the World Conference on Human Rights in 1993 and the Beijing Platform of Action adopted at the Fourth World Conference on Women in 1995, which explicitly stated that violence against women during armed conflict including rape and sexual slavery was a war crime, and that its truth should be identified and disclosed, its victims properly redressed and its perpetrators punished,

*While* the International War Crimes Tribunals for the Former Yugoslavia and Rwanda established by the United Nations in the early 1990s have prosecuted those who were responsible for violence against women and the International Criminal Court now being established will cover under its jurisdiction violence against women during war and armed conflicts committed after its establishment,

*Whereas* that the Japanese Military sexual slavery has been a particularly grave and egregious form of violence against women in violation of the then existing principles of international law and deeply shocking the conscience of humanity,

*Noting* that the military tribunals conducted by the Allied Powers throughout Asia following the end of the Second World War seldom prosecuted Japan's military sexual slavery and other cases of sexual violence against women as war crimes, and that, in the subsequent decades, the existing national and international systems of justice have failed to bring the perpetrators to justice,

*Cognizant* that women victims of the Japanese Military sexual slavery continue to suffer, both physically and psychologically, from these violations without justice including compensation and prosecution of the perpetrators of these crimes,

*Aware* that after the long and tortuous silence, survivors of this slavery have demanded in the 1990s that justice be done and their long denied human rights be restored to them,

*Alarmed* that even after half a century after the crimes were committed, the survivors do not receive a word of acknowledgement of the crimes by the perpetrators, nor is there any genuine apology made or reparations paid by those responsible for the crimes committed against them while one survivor after another is passing away without any redress,

*Mindful* of a moral responsibility of every member of the global civil society and also a common task for international women's movement to restore justice for the women victims and survivors of wartime sexual violence including sexual slavery,

*Determined* to restore justice, human rights, and dignity to all victimized women, to contribute to end the cycle of impunity for violence against women in wartime and armed conflict situations and thereby prevent repetition of such crimes,

*Convinced* that this effort will also contribute toward creating a 21st century and a new millennium free of war and violence against women making the full documentation public to the world as indelible records of the 20th century history,

*Desiring* to hold a Women's International War Crimes Tribunal 2000 for the Trial of Japanese Military Sexual Slavery in the last month of the year 2000, the primary task of which will be to bringing out truths and to establish the legal responsibility of states and individuals involved in sexual violence and especially the sexual slavery of "comfort women" at "comfort stations" perpetrated by the Japanese Imperial Army in connection with Japan's colonial domination and war of aggression throughout the Asia-Pacific region,

*Convinced* that the Tribunal is competent to render its judgements in the light of the principles of international law, human conscience, humanity and gender justice focusing on the principles of women' human rights which have come to be accepted by the international community as international human rights as the result of brave struggles of many people including women survivors themselves,

*Mindful* that while the Tribunal, as a people's and women's initiative, has no real power to enforce its judgements, it nonetheless carries the moral authority demanding their wide acceptance and enforcement by the international community and national governments,

*Concludes* hereby the Charter of Women's International War Crimes Tribunal 2000 for the Trial of Japanese Military Sexual Slavery.

## Article 1

### Establishment of the Women's International War Crimes Tribunal

The Women's International War Crimes Tribunal ("the Tribunal") is hereby established. It will conduct a public trial in Tokyo, Japan, from the 8th to the 10th of December, 2000 for crimes of sexual violence against women, including sexual slavery, [crimes of serious violations of women's human rights such as rape, sexual slavery, enforced prostitution or any other form of sexual violence] committed by Japanese Imperial Army before and during the Second World War [in various Asian countries under its colonial domination and military occupation before and during the Second World War] in violation of international humanitarian law and other international laws as constituting war crimes, crimes against humanity and crimes of genocide.

## Article 2

### Competence of the Tribunal

The Tribunal shall have jurisdiction over natural persons (including dead persons), legal persons and the states, pursuant to the provisions of the present Charter.

## Article 3

### Individual Criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of any of the crimes referred to in Article 1 of the present Charter, shall be individually held responsible for the crime.

2. Those who have concealed evidence of the crimes in Article 1 shall be individually held responsible.

3. The official capacity as the Head of the State or Government, a military commander or a government official, shall not relieve a person from criminal responsibility, nor mitigate punishment.

4. A superior or a military commander is criminally responsible for crimes committed by a subordinate if that superior or commander knew, or had reason to know, that the subordinate was committing or about to commit such acts and the superior failed to take the necessary and reasonable measures to prevent or repress their commission or submit the matter to the competent authorities for investigation and prosecution.

5. The fact that the crimes are committed in pursuant to an order of a superior or of a government alone shall not relieve a person from criminal responsibility.

## Article 4

### [State Responsibility]

1. When a state is in serious breach of an international obligation of essential importance for the

→ res. under IC for an act or omission attributable to it

perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state.

fundamental interests of international (global?) community and commits an unlawful act which is recognized as a crime by international (global?) community as a whole, this act of the State constitutes an international crime under international law. Accordingly, the State shall be held responsible for such an international crime committed in the following cases when:

- a. its military force committed any of such crimes referred to in Article 2;
  - b. the State itself has concealed or distorted the facts or in any other manner neglected or obstructed its responsibility to find truth and disclose it concerning the crimes referred to in Article 3;
  - c. failed to prosecute and punish those responsible for the crimes;
  - d. failed to pay reparations to the victims or;
  - e. failed to take necessary measures to prevent recurrence.
2. The Tribunal shall hold responsible any State other than Japan if it is established that the particular State relieved of their responsibility any of those who were responsible for the crimes referred to in Article 2 and/or obstructed redress to be provided to the victims.]

#### **Article 5**

##### **Territorial and temporal jurisdiction of the Tribunal**

1. The territorial jurisdiction of the Tribunal shall extend to all the countries and regions that were colonized, ruled or occupied by Japan and to all the countries and regions whose inhabitants were victimized.
2. The temporal jurisdiction of the Tribunal shall extend ~~as long as the effects of the crimes can be observed.~~ [from the year 1931] to the present day

#### **Article 6**

##### **Non-applicability of the statute of limitations**

The crimes that the Tribunal shall try shall not be subject to any statute of limitations.

#### **Article 7**

##### **Organization of the Tribunal**

1. The Tribunal shall consist of ( ) internationally renowned scholars and activists in the field of human rights serving as Judges, Prosecutors, and other officials of the Tribunal.
2. The International Organizing Committee shall appoint officials of the Tribunal with due consideration of the following:
  - (a) gender balance
  - (b) regional balance
  - (c) contribution in advocacy, protection and promotion of women's human rights
  - (d) professional knowledge and experience of international humanitarian and human rights laws and international criminal laws
  - (e) experience in dealing with crimes of gender and sexual violence

## **Article 8**

### **The Registry**

The International Organizing Committee establishes a Registry to the Tribunal. The Registry shall be responsible for the administration and servicing of the Tribunal.

## **Article 9**

### **Investigation and indictments**

1. The Prosecutors shall initiate investigation on the basis of information received from individuals, survivors, non-governmental organizations, or any source, and shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations.
2. The prosecutors shall submit indictments to the Tribunal when, based on their investigation, they decide they have reasonable evidence.

## **Article 10**

### **Trial Proceedings**

1. The Tribunal shall read the indictments from the prosecutors at the commencement of the trial, and shall ensure a fair and expeditious trial.
2. The hearing shall be carried out based on the evidence that the prosecutors submit.
3. The process of examining evidence shall take into account to gender and cultural issues and the trauma faced by the victims.
4. The hearings shall be held in public.
5. The working language of the Tribunal shall be English. Translation and interpretation into other languages shall be provided as per needs.

## **Article 11**

### **Request to the accused to be present at the Tribunal**

The Tribunal shall request the individuals who are alleged to have been responsible for the crimes referred to in Article 1 and/or their attorneys to be present at the Tribunal to submit evidence and make oral statements.

## **Article 12**

### **Rules of evidence**

The Tribunal shall admit as evidence the following:

- (a) documentation: Written evidences such as official documents, affidavits / depositions, signed statements, diaries, letters/notes or other documents, experts' views, photos and other visual

documents

(b) personal evidence: Written or oral testimonies of survivors and witnesses, statements of expert witnesses

(c) material evidence: Other relevant physical and material evidence.

### **Article 13**

#### **Participation and protection of victims and witnesses**

1. The Tribunal shall provide the protection to victims and witnesses and any other person at risk on account of their testimony. Such protection measures shall include, but shall not be limited to, audio-visual proceedings and other protective measures to safeguard the victim's identity wherever necessary.

2. The Tribunal shall have regard to the nature of crimes being dealt with and shall take appropriate measures, including after the Tribunal, to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses of sexual violence and to take trauma into account.

### **Article 14**

#### **Judgements**

1. The judgement shall be rendered by a majority of the judges of the Tribunal, and shall be delivered by the Tribunal in public. open court.pronounce s after the hearings based on evidence before the Tribunal.

2. The judgement shall state clearly whether the accused is guilty or innocent of the alleged crime, and the reasons for the particular judgement.

3. The judgement may make an order against a person or state held responsible to offer redress to the victims, including apology, restitution, compensation and rehabilitation.

4. The judgement shall be Its copies shall be sent to the survivors, the accused or their attorneys, the government of Japan, the governments of the States concerned, and international agencies including the United Nations High Commissioner for Human Rights, and shall be widely distributed throughout the world as historical documents.

### **Article 15**

#### **Cooperation**

1. Every individual, non-governmental organization, Government, intergovernmental organization, United Nations organs and other international bodies shall cooperate with the Tribunal in the investigation and prosecution of persons and states responsible for acts referred to in Article 1 of the present Charter.

2. Every individual, non-governmental organization, Government, intergovernmental organization, United Nations organ and any other international body shall respect any request for assistance or