



Draft:

**THE CHARTER / Statute / Agreement OF THE WOMEN'S INTERNATIONAL WAR
CRIMES TRIBUNAL 2000**

*Revised draft prepared by Women's Caucus for Gender Justice
for VAWW-NET Japan (August 24, 1999)*

(Suggested) PREAMBLE

Whereas the world today is marked by wars across national boundaries and internal war conflicts despite the lessons of the Second World War

Recognizing that even after 50 years, justice has been denied to many victims and survivors of the Second World War, particularly women victims of crimes of sexual violence.

Realizing that existing national and international systems of justice have failed to hold perpetrators accountable for the crimes they committed against women and provide reparation to the victims.

Asserting that members of the global civil society have a moral responsibility to judge whether or not our governments, soldiers and colleagues are acting in conformity with accepted notions of universal and international human rights norms and whether we believe they should be held accountable for their actions.

Acting in pursuant to such a moral responsibility, organizations from the offending country (Japan), organizations from countries where women were victimized, (Korea, China, Taiwan, the Philippines, Indonesia and the Democratic People's Republic of Korea) and an International Advisory Committee comprising of eminent scholars and human rights activist hereby establishes Women's International War Crimes Tribunal ("The Tribunal"). (If it is an agreement, then we have to figure out who the parties between who the agreement is with.)

Stating its wish to organize the Tribunal to bring justice to the former 'comfort women' at comfort stations established by the Japanese Imperial Army during Second World War.

Recognizing that all efforts for justice to the former 'comfort women' have yielded no results and further that many of these women have died without as much of an acknowledgement of or apology from those responsible for the the crimes committed against them.

Reiterating its wish to let the world know the whole truth concerning the issue of the former 'comfort women'

Recognizing that the Tribunal is not the court under state sovereignty and accordingly has no power to enforce the verdicts except the moral responsibility to make it widely known.

Article 1

Establishment of the Women's International War Crimes Tribunal

The International Organizing Committee hereby undertakes to establish the Women's International War Crimes Tribunal ("The Tribunal") in Tokyo from December 8 to December 10 of 2000. The Tribunal will conduct a public trial to prosecute those responsible for crimes of sexual violence against women, in particular crimes committed by the Japanese Imperial Army before and during the Second World War.

Article 2

Scope of the Tribunal

The Tribunal shall try crimes of serious violations of women's human rights committed under international humanitarian law such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence in and of themselves and as constituting crimes against humanity and war crimes.

Article 3

Competence of the Tribunal

The Tribunal shall have jurisdiction over natural persons, legal persons and the state, pursuant to the provisions of the present Charter / Statute / Agreement, including the official position of any person, whether as Head of State or Government or as a military commander or a responsible Government official.

Article 4

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 2 of the present Charter / Statute / Agreement, shall be individually held responsible for the crime.
2. Those who have concealed evidences of the crimes in Article 2 shall be individually responsible.
3. Persons holding official positions shall not be relieved of criminal responsibility nor mitigate punishment. A Superior or Commander is criminally responsible for crimes committed by a subordinate if,
 - a. the Superior or Commander knew, or had reason to know, that the subordinate was about to commit such acts or had done so and;
 - b. the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. An accused is criminally responsible even if the crimes are committed in pursuant to an order of a Government or of a superior.

Article 5

State Responsibility

1. A state shall be criminally responsible for its failure to restrain its military force from committing a crime referred to in Article 2 of the present Charter / Statute / Agreement and such crimes constitutes a serious breach of an international obligation for safeguarding the human beings.
2. A state shall be responsible additionally for its negligence if it is established that

- a. the state it has concealed or distorted the facts concerning the above crimes;
- b. failed to prosecute and punish those responsible for the crimes;
- c. pay reparations to the victims and;
- d. has in any manner, whether intentionally or unintentionally neglected its responsibility to protect civilians from victimization.

Article 6

Territorial and temporal jurisdiction

1. The territorial jurisdiction of the Tribunal shall extend to all the countries and regions that were occupied by Japanese Imperial Army and to those countries and regions which inhabitants were victimized.
2. The temporal jurisdiction of the Tribunal shall extend from the year 1939 to the present day as long as the effects of the crimes can be observed.

Article 7

Non-applicability of the statute of limitations

The crimes within the jurisdiction of the Tribunal shall not be subject to any statute of limitations.

Article 8

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. contribution in advocacy, protection and promotion of women's human rights
 - b. professional knowledge and experience of international criminal laws, international humanitarian and human rights laws
 - c. gender balance
 - d. experience in dealing with crimes of gender and sexual violence.

Article 9

The Process

1. The officials of the Tribunal shall be responsible for examining the evidences of the crimes and initiate proceedings against those responsible for crimes pursuant to the provisions of the present Charter/Statute/Agreement.
2. Proceeding shall be initiated on the basis of information received from individuals, survivors, NGOs or other interested source.
3. The process of examining evidence shall be sensitive to gender and cultural issues and to the trauma faced by the victims.

Article 10

The Registry

The International Organizing Committee shall serve as the Registry and be responsible for the administration and servicing of the Tribunal.