

WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL ON JAPAN'S MILITARY SEXUAL SLAVERY

INDICTMENT

The East Timorese Prosecutors of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (hereinafter "The Tribunal"), pursuant to their authority granted under Article 11 of the Charter of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (hereinafter "The Charter"), charges:

DEFENDANTS The Government of Japan, and Lieutenant Colonel IMAGUMA, Sergeant MIHARA,

With

War Crimes and Crimes against Humanity, as set forth below:

HISTORICAL BACKGROUND

I. East Timor Recent History

1. East Timor is located between latitudes 8 o 17 ' S and 10 o 22' S and between 123 o 25' E and 127 o 19' E longitude. The total size of East Timor, which comprises the eastern half of the island of Timor, 14,925 square kilometers. The Territory of East Timor includes the island of Atauro, north of Dili, the uninhabited island of Jaco, of the far eastern tip of East Timor, and the enclave of Oecussi, located in West Timor.
2. In 1960, East Timor was recognized as a Non-Self-Governing Territories by the UN. In 1974, Portugal sought to establish a provisional government and a popular assembly, which would determine the status of East Timor. Civil war broke out between those who favored independence and those who advocated integration with Indonesia. Portugal withdrew, and Indonesia intervened militarily, occupied the Territory and "integrated" East Timor as its 27th province. The United Nations never recognized this integration, and both the Security Council and the General Assembly called for Indonesia's withdrawal. The UN Decolonization

Committee continued to treat East Timor as a Non-Self-Governing Territory, presently under UN administration.

3. Beginning in 1982, successive Secretaries-General held regular talks with Indonesia and Portugal aimed at resolving the status of the territory. In June 1998, Indonesia proposed a limited autonomy for East Timor within Indonesia, resulting in a set of agreements between Indonesia and Portugal, signed in New York on 5 May 1999. The two Governments agreed to conduct a "popular consultation" in order to ascertain whether the East Timorese people accepted or rejected a special autonomy for East Timor within the unitary Republic of Indonesia.
4. To carry out the consultation, a UN mission was established in East Timor (UNAMET) on 11 June 1999. UNAMET registered 451,792 potential voters among the population of over 800,000 in East Timor and abroad. On 30 August 1999, some 98 per cent of registered voters went to the polls deciding by a margin of 94,388 (21.5 per cent) to 344,580 (78.5 per cent) to reject the proposed autonomy and begin a process of transition towards independence.
5. Following the announcement of the result, pro-integration militias, with the back-up of the Indonesian security forces, launched a campaign of violence, looting and arson throughout the entire territory. The Indonesian authorities did not respond effectively to the violence, and many East Timorese were killed and as many as 500,000 were displaced from their homes, about half leaving the territory, in some cases by force.
6. On 20 September 1999, a multinational force (INTERFET) was established to restore peace and security in East Timor. On 19 October 1999, the Indonesian People's Consultative Assembly formally recognized the result of the consultation. On 25 October 1999, the UN took over the administration of the Territory.

II. East Timor as a Portuguese Colony Occupied by Japan

1. Portuguese ships visited the island of Timor in 1515. The first Portuguese permanent settlement was established in the last quarter of the sixteenth century. Only in 1702 the Portuguese crown assumed formal administration over East Timor and appointed a governor, under the jurisdiction of the viceroy in Goa, who established his headquarters in Lifau, Ambeno (Oecussi). In 1769, the Portuguese administration moved to Dili.
2. In 1859, Portugal signed a treaty with the Netherlands demarcating the boundary between Dutch and Portuguese Timor, to be followed by a treaty

in 1904 and an arbitral sentence in June 1914. In 1896, Timor became a separate colony.

3. Between the two World Wars, the number of Portuguese administrators increased though in 1928, the number of Portuguese civilians was 200 in addition to 300 soldiers.
4. From the 1930s onward, Japan had started to develop a keen interest in East Timor, and expanded its trade links with the colony.
5. Allied troops landed in East Timor on 17 December 1941, against protests of the Portuguese governor Ferreira de Carvalho, and disregarding Portuguese neutrality. In February 1942, Japanese forces invaded Dili, and Allied forces retreated to the hills.
6. After the Australian forces were evacuated from East Timor on 10 January 1943, the Japanese conducted punitive expeditions against the Timorese, who were seen as hostile and supporters or potential supporters of the Allied forces. The territory was placed under military occupation. In areas where the Australians had been active, villages were razed to the ground, and whole families wiped out. Food production went largely into forced deliveries to the Japanese. The principal targets for retribution were those who had actively assisted the allied forces. East Timorese were forced to cooperate with the Japanese in defensive measures and collaboration with the Allied forces would result in severe reprisals, including summary executions. The Japanese Army established a system of comfort stations, where East Timorese girls and women were brought and forced to serve Japanese Army personnel sexually and as laborers.
7. The Japanese surrendered on 25 September 1947. The cost in human life was never precisely estimated but from Portuguese population figures, it was estimated that more than 40,000 Timorese died as a result of the war. The Territory was devastated physically and economically, its population close to starvation, and its livestock population reduced to less than a third of its pre-war level.

III. Organization of Japanese Military Occupation of East Timor

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IV. The Establishment of Comfort Stations and the Treatment of East Timorese Girls and Women

1. Japanese arrived in Dili in 1942. They moved to Aileu in 1943, where they established a comfort station, a white house and former village meeting place in the village of SUKU FATUBOSA. A number of women who were brought to these comfort houses were made to sexually serve up to 30 Japanese soldiers a day.
2. Other comfort houses were established in Bobonaro (MEMO, UATA), Baucau (TIRILOLO), Aileu and Dili. The system was enforced through the *Liurajs*, traditional Kings, who were compelled to recruit and provide girls to the Japanese Army. In some instances, *Liurajs* were compelled to have their residences used as comfort stations. When a woman would escape, the *Liurajs* would face consequences such as interrogation and beatings.
3. In the comfort stations, under duress or actual threat of bodily harm or death, girls were made to sexually serve multiple Japanese soldiers and perform other services. Girls were also compelled to dance and sing, and to attend parties of the Japanese troops in different villages. In addition, the girls were forced to do labor, such as working in the fields, cooking and household chores.
4. Girls as young as 12 years of age were taken by force, deceived, or otherwise compelled by threats that family members would be killed, to serve the Japanese soldiers. Often, family members and village elders were made to agree to the taking of the girls.
5. Some girls were confined in the comfort houses, while other girls were taken by Japanese soldiers at night, detained, mistreated, raped and returned to their village or home during the day. Some girls were taken at night to perform sexual services for months or years. Many girls were made to endure multiple acts of sexual violence, at times committed by more than one Japanese soldier, or by one soldier after the other.
6. The acts of sexual violence were generally accompanied by explicit threat of bodily harm or death. The girls were compelled to accept to be raped and otherwise sexually abused. A girl who refused to provide sexual services or other labor, would be beaten.
7. Many women and girls were repeatedly raped for a number of years. After the surrender of the Japanese, victims who managed to return to their villages suffered social isolation or a lifetime trauma.
8. Women from other countries such as China, and Indonesia, were also made to serve in comfort houses in East Timor.

9. The Japanese government was aware that soldiers, officers or private persons were committing the acts of recruiting, taking or abducting East Timorese women and girls, the detention of East Timorese women and girls, and of the sexual and violence and bodily harm perpetrated against them. These acts were committed by, or at the instigation of, or with the consent or acquiescence of, persons acting in official capacity as Japanese Army Commanders, officers or soldiers. The Japanese government knew or had reason to know that personnel of the Japanese Imperial Army were involved in the establishment of comfort stations, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

LAW

1. A distinction needs to be drawn between individual criminal responsibility for the crimes committed by the individual soldiers and officers of the Japanese Imperial Army on the one hand, and state responsibility of Japan for the acts of officers of the Japanese Imperial Army imputable to it under international law on the other. The jurisdiction of the Tribunal covers both types of responsibility.
2. As to the acts imputable to the Japanese government, it is a well-established principle of public international law and was so at the time the acts were committed, that acts committed by members of the armed forces of a state are imputable to the state for purposes of state responsibilities as acts committed by organs of the state. This applies irrespective whether the acts were committed pursuant to official or declared state policy, ordered, or committed *ultra vires*. Thus the Japanese government incurred responsibility for the acts perpetrated by members of its armed forces against East Timorese girls and women during the occupation of East Timor.
3. Individual members of the Japanese Imperial Army in East Timor incur individual criminal responsibility for those acts that constitute war crimes and/or crimes against humanity. In accordance with the rules of customary international law applicable at the time the crimes were committed, individual criminal responsibility attached to war crimes and crimes against humanity. The tribunal has jurisdiction over both types of crimes.
4. War crimes are violations of the laws and customs of war committed in times of war, including the unlawful occupation of territory. The presence of Japanese forces in East Timor constituted an unlawful occupation in accordance with article 42 Hague Regulations (Annex to the 1907 Hague

Convention Respecting the Laws and Customs of War on Land), which was applicable to Japan at the time of the commission of the acts.

5. The notion of crimes against humanity as an independent juridical concept was first recognized in article 6© of the Nuremberg Charter. The definition, however, of crimes against humanity, was a codification of a concept that was recognized as far back as 1915, and the Nuremberg Judgment noted that the Charter, attaching individual criminal responsibility for crimes against humanity, was the "expression of international law existing at the time ...".
6. The acts committed by Japanese Army personnel against East Timorese women can be roughly divided in the recruitment, taking or abduction of women and girls for purposes of providing sexual services to members of the Japanese Army, and the acts perpetrated against them, including detention, rape, sexual violence, beatings, and other inhumane acts.
7. The recruitment of women and girls constituted a violation of the customary norm prohibiting slavery and the 1926 Slavery Convention. The Convention states that "slavery is the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with the intent to reduce him to slavery and, in general every act of trade and transport in slaves." The East Timorese girls and women were taken against their will or after the payment of money to the parents or the Liurai, by the Japanese Army. Personnel of the Japanese Army exercised their powers over those girls and women at their discretion without any means for those so held, not to obey what they were told or made to do or to accept being done to them. These women and girls were held in a state of slavery, by members of the Japanese Army. These individuals have incurred individual criminal responsibility for such acts.
8. The recruiting, taking, abduction, transportation and detention of the East Timorese girls and women, and the establishment of comfort houses in East Timor, organized and carried out by members of Japanese Army, was a form of slave trade and state of slavery for which the Japanese government incurred responsibility as a state under international law.
9. Rape, sexual violence and sexual slavery of women constitutes a violation of the Hague Regulations, in particular of article 46 which provides that in territory occupied by the hostile army "family honor and rights, the lives of persons, and private property, as well as religious convictions and practices, must be respected." Serious violations of the Hague Regulations, applicable at the time the acts were committed, amount to war crimes to which individual criminal responsibility attached. The

Nuremberg Charter, adopted on 8 August 1945, and reflective of customary international law at the time, confirmed that violations of article 46 were considered war crimes at the time the acts were committed. The Charter defined war crimes as "violations of the laws and customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory ..."

ALLEGATIONS

I. General Allegations

Unless otherwise stated, the crimes alleged were committed between 1942 and 1945.

At all times relevant to this indictment, the Territory of East Timor was under military occupation by Japanese forces.

All acts and omissions charged as crimes against humanity were committed as part of a widespread or systematic military sexual slavery against the East Timorese female civilian population in East Timor.

The victims of the war crimes and crimes against humanity charged in each paragraph were East Timorese women and girls, who were forced, deceived, coerced, and in some cases abducted to provide sexual services to the Japanese military.

Each of the accused is individually responsible for the crimes alleged against him in this indictment, pursuant to article 3 of the Charter. Individual criminal responsibility includes committing, planning, instigating, ordering, or otherwise aiding and abetting in the planning, preparation or execution of a crime referred to in article 2 of the Charter.

....., as far as he had the authority, is also, alternatively, criminally responsible pursuant to article 5 of the Charter.

The Japanese government, as a state, can be held responsible for the commission of crimes by military forces or government officials, and acts or omissions pursuant to article 4 of the Charter.

II. Accused

1.1 Individual Accused

KHAWANO

- a. As a Commander in Bobonaro district, Memo village, **KHAWANO** raped Esmeralda, a girl of approximately 12 years old. She had been brought to his house after having been captured by five Japanese soldiers by force, from the field. After the rape, Esmeralda was brought home. After the Japanese gave money to her parents, Esmeralda was brought to the house of **KHAWANO** every evening, for three years, to provide sexual services at night. At night, she was raped, and otherwise compelled to have sexual intercourse with **KHAWANO**. She was returned home in the morning.

HARUKA

- b. For three years, Esmeralda, a girl of approximately 12 years old, was brought every evening to sexually serve **KHAWANO**. In the third year, Esmeralda had to serve sexually also **HARUKA**, another Commander in Bobonaro district, Memo village.

SIMIMURA

- c. For three years, Esmeralda, a girl of approximately 12 years old, was brought every evening to sexually serve **KHAWANO**. In the third year, Esmeralda had to serve sexually also **SIMIMURA**, another Commander in Bobonaro district, Memo village.

OHARA

- d. Maria Rosa Fernanda Noronha, at the age of 12, was forced by the village head of Bobonaro and after threat that her parents would be killed, to serve Commander **OHARA**. She was given a special space in a house used as comfort station in Tuduil and served them sexually for three months. Apart from serving sex, she had to sing and was made to dance in the villages of Lourba, Marobo, and Bobonaro.

TAHANIAMA

- e. Maria Rosa Fernanda Noronha, at the age of 12, was forced by the village head of Bobonaro and after threat that her

parents would be killed, to serve Commander TAHANIAMA. She was given a special space in a house used as comfort station in Tuduil and served them sexually for three months. Apart from serving sex, she had to sing and was made to dance in the villages of Lourba, Marobo, and Bobonaro.

MIHARA

- f. In Baucau, Liuraj (King) Hermenegildo was made to identify women and girls to serve the Japanese Military. His house was turned into the comfort station of Tirilolo. Almost all of the women in this station aged between 17-20 years, including from other districts and countries. The women, including Anastasia, cousin of the Liuraj, Branca and Elda Saldanha Susedo (deceased), served Japanese Army personnel in the comfort station in Baucau, including MIHARA, Sergeant. Lieutenant Colonel. The victims were made to work during the day doing laundry, and cooking, and at night they had to serve the officers sexually. If the victims refused to provide sexual service, they were beaten. Branca later married but never had children. Susedo has a daughter from MIHARA.

IMAGUMA

- g. In Baucau, Liuraj (King) Hermenegildo was made to identify women and girls to serve the Japanese Military. His house was turned into the comfort station of Tirilolo. Almost all of the women in this station aged between 17-20 years, including from other districts and countries. The women, including Anastasia, cousin of the Liuraj, Branca and Elda Saldanha Susedo (deceased), served Japanese Army personnel in the comfort station in Baucau, including IMAGUMA, Lieutenant Colonel. The victims were made to work performing household tasks including laundry and cooking, and at night they had to serve the officers sexually. If the victims refused to provide sexual service, they were beaten. Branca later married but never had children.

1.2 Japanese Government

The system of sexual slavery was established by members of the Japanese Armed Forces occupying East Timor. In some cases, Japanese Army personnel either threatened, otherwise coerced, or

paid local *luirajs* to locate houses to convert to comfort stations, and to identify and bring girls and women to sexually serve the Japanese army personnel. In other instances, members of the Japanese armed forces would abduct girls and women from their homes and villages directly. Members of the Japanese armed forces who sexually abused, raped and otherwise mistreated the East Timorese girls and women. Members of the Japanese armed forces who made the girls and women work for them in household and field labor work. The members of the Japanese Armed forces recruited, abducted, sexually abused, and otherwise mistreated the girls and women who they detained, were individuals acting in official capacity as members of the Japanese Armed Forces, at different ranks and levels.

The comfort houses were ran by the Japanese military. This is also evidenced by the fact that military doctors would check the health of the girls and send them away when they had attracted a disease.

Comfort stations were established in different parts of East Timor and women and girls taken from various parts of the island. The establishment of multiple comfort houses in East Timor by members of the Japanese Armed Forces was known to the Japanese government. Nothing was done to stop this system of sexual slavery and no member of the armed forces was prosecuted or punished for the perpetration of these crimes.

III. Charges

1.1 Accused Individuals

By his involvement in the above acts, as mentioned in para. a, **KHAWANO** committed:

Count 1: Rape, a war crime under art. 2(1) in conjunction with article 3 Women's Charter.

Count 2: Rape, a crime against humanity, under art. 2(1) in conjunction with article 3 Women's Charter.

Count 3: Sexual Slavery, a crime under international law under art. 2(1) in conjunction with article 3 Women's Charter.

By his involvement in the above acts, as mentioned in para. b, **HARUKA** committed:

Count 1: Rape, a war crime under art. 2(1) in conjunction with article 3 Women's Charter.

Count 2: Rape, a crime against humanity, under art. 2(1) in conjunction with article 3 Women's Charter.

Count 3: Sexual Slavery, a crime under international law under art. 2(1) in conjunction with article 3 Women's Charter.

By his involvement in the above acts, as mentioned in para. c, **SIMIMURA** committed:

Count 1: Rape, a war crime under art. 2(1) in conjunction with article 3 Women's Charter.

Count 2: Rape, a crime against humanity, under art. 2(1) in conjunction with article 3 Women's Charter.

Count 3: Sexual Slavery, a crime under international law under art. 2(1) in conjunction with article 3 Women's Charter

By his involvement in the above acts, as mentioned in para. d, **OHARA** committed:

Count 1: Rape, a war crime under art. 2(1) in conjunction with article 3 Women's Charter.

Count 2: Rape, a crime against humanity, under art. 2(1) in conjunction with article 3 Women's Charter.

Count 3: Sexual Slavery, a crime under international law under art. 2(1) in conjunction with article 3 Women's Charter.

By his involvement in the above acts, as mentioned in para. e, **TAHANAMA** committed:

Count 1: Rape, a war crime under art. 2(1) in conjunction with article 3 Women's Charter.

Count 2: Rape, a crime against humanity, under art. 2(1) in conjunction with article 3 Women's Charter.

Count 3: Sexual Slavery, a crime under international law under art. 2(1) in conjunction with article 3 Women's Charter.

By his involvement in the above acts, as mentioned in para. f, **MIHARA** committed:

Count 1: Rape, a war crime under art. 2(1) in conjunction with article 3 Women's Charter.

Count 2: Rape, a crime against humanity, under art. 2(1) in conjunction with article 3 Women's Charter.

Count 3: Sexual Slavery, a crime under international law under art. 2(1) in conjunction with article 3 Women's Charter.

By his involvement in the above acts, as mentioned in para. g, **IMAGUMA** committed:

Count 1: Rape, a war crime under art. 2(1) in conjunction with article 3 Women's Charter.

Count 2: Rape, a crime against humanity, under art. 2(1) in conjunction with article 3 Women's Charter.

Count 3: Sexual Slavery, a crime under international law under art. 2(1) in conjunction with article 3 Women's Charter.

1.2 Japanese Government

By its involvement in the above acts and omissions, the Japanese government is responsible for:

Count 1: Violating article 4(a) of the Women's Charter.

Count 2: Violating article 4(b) of the Women's Charter.