

**THE SUGGESTED CHARTER OF
WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL 2000
4th draft, VAWW-NET Japan (23 Sept,1999),
based on the revision by Women's Caucus for Gender Justice (Aug., 1999)**

Preamble (to be closely reviewed)

Whereas the world today is marked by war 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 (South Korea, China, Taiwan, the Philippines, Indonesia and North Korea) and an International Advisory Committee comprising of eminent scholars and human rights activists hereby establishes Women's International War Crimes Tribunal ("the Tribunal").

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 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 judgments 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 Xth to December Yth of 2000. The tribunal will conduct a public trial to prosecute those responsible for crimes of sexual violence against women, including sexual slavery, committed by Japanese Imperial army before and during the Second World War (1931 - 1945).

Article 2**Scope of the Tribunal**

The Tribunal shall try crimes of serious violations of women's rights committed against 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 war crimes, crimes against humanity and crimes of genocide.

Article 3**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. The official position of any accused person, whether as the Head of the State or Government or as a military commander or a responsible Government official, shall not relieve such a person of criminal responsibility, nor mitigate punishment.

Article 4**Criminal responsibility of the individual**

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, shall be held as an individual responsible for the crime.
2. Those who have concealed evidence of the crimes in Article 2 shall be held responsible as an individual.
3. Persons holding official positions shall not be relieved of criminal responsibility nor mitigated 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. When a state is in serious breach of an international obligation of essential importance for the fundamental interests of global community and commits an unlawful act which is recognized as a crime by global community ~~as a whole~~, this act of the State constitutes an international crime

under international law. The State shall be held responsible for its failure to restrain its military force from committing such crimes.

2. A state shall be responsible additionally for its negligence, if it is established that:
 - a. 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 above crimes;
 - b. failed to prosecute and punish those responsible for the crimes;
 - c. pay reparations to the victims or;
 - d. failed to take up necessary measures to prevent recurrence.
3. 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 acts in violation of Article 2 of the present Charter and/or obstructed redress to be provided to the victims.

Article 6**Territorial and temporal jurisdiction**

1. The territorial jurisdiction of the Tribunal shall extend to all the countries and regions that were colonized or occupied by Japan and to all the countries and regions whose inhabitants were victimized or inflicted damage.
2. The temporal jurisdiction of the Tribunal shall extend from the year 1931 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. gender balance
 - b. regional balance
 - c. contribution in advocacy, protection and promotion of women's human rights
 - d. professional knowledge and experience of international criminal laws, international humanitarian and human rights laws
 - e. 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 evidence of the crimes and initiate proceedings against those responsible for crimes pursuant to the provisions of the present Charter.
2. The Proceedings 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 establishes a Registry to the Tribunal. The Registry shall be responsible for the administration and servicing of the Tribunal.

Article 11

Rules of evidence

The Tribunal shall admit as evidence the following:

- (a) Written evidences such as official documents, affidavits / depositions, signed statements, diaries, letters/notes or other documents, experts' views, photos and other visual documents
- (b) Written or oral testimonies of survivors and witnesses, statements of expert witnesses
- (c) Other relevant physical and material evidence.

Article 12

Commencement and conduct of proceedings

1. The Tribunal shall commence in advance investigation and research of details of cases and evidence.
2. The hearings shall be public.
3. The working languages of the Tribunal shall be English. Translation and interpretation into other languages shall be provided as per needs.

Article 13

Concerning the accused (still to be drafted)

Article 14

Participation and protection of victims and witnesses

1. The Tribunal shall provide the protection of 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, camera 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.

Article 15

Judgments

1. The Tribunal shall pronounce judgments on persons and the states convicted of any of the crimes referred to in Article 2 of the present Charter.
2. The judgments shall be rendered by a majority of the judges of the Tribunal, and shall be

delivered by the Tribunal in public. It shall be accompanied by a reasoned opinion including recommendations regarding redress to the victims.

3. The Tribunal may order convicted persons or the states offer reparation to the victims. Reparation includes restitution, compensation and rehabilitation. The Tribunal may also order the State ?disciplinary indemnity?懲罰的賠償.
4. Copies of the judgments shall be made public. They shall be sent to 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 as historical documents.

NOTE:

-This draft has been originally written and revised by VAWW-NET Japan in co-operation with enthusiastic lawyers, based on the Charter of the International Military Tribunal for the Far East (the Tokyo Tribunal), the Statutes of the International War Crimes Tribunal for former Yugoslavia and Rwanda, the Statute of the International Criminal Court and the draft charter of crime against peace and security by UN International Law Commission, 3rd draft revised by Women's Caucus for Gender Justice, then reviewed again by VAWW-NET Japan.

-The suggested preamble is not discussed yet.

-Any comments or suggestions welcome!!