

From - Mon Nov 15 11:20:07 1999

X-POP3-Rcpt: shcho@cc

Received: from mail.jca.ne.jp (ns.jca.ne.jp [210.151.253.65])

by cc.sungshin.ac.kr (8.9.1a-H1/8.9.1) with ESMTP id BAA25183

for <shcho@cc.sungshin.ac.kr>; Mon, 8 Nov 1999 01:57:06 +0900 (KST)

Received: from mail.jca.apc.org (ni.jca.apc.org [192.168.128.124] (may be forged))

by mail.jca.ne.jp (8.9.3/3.7W_NS-2) with ESMTP id BAA08855;

Mon, 8 Nov 1999 01:11:48 +0900 (JST)

Received: from genesec (tk220DS61.tk2.mesh.ad.jp [133.205.26.61])

by mail.jca.apc.org (8.9.3/3.7WJCA-AX-K6) with SMTP id BAA00353;

Mon, 8 Nov 1999 01:11:24 +0900 (JST)

Date: Mon, 08 Nov 1999 01:14:16 +0900

From: Yayori Matsui <yayori@jca.apc.org>

To: Cho Sihyun <shcho@cc.sungshin.ac.kr>

Cc: filo hirota <mmbroma@tin.it>,

"ICC Women's Caucus" <iccwomen@maclaw.law.cuny.edu>,

Internatioanl Human Rights Law Group <ihrlg@aol.com>,

Nicola Liscutin <liscutin@diptokyo.org>,

Radhika Coomaraswamy <radhika@sri.lanka.net>,

Ruth Seifert <seifert.zimmermann@planet_interc>,

Sunila Abeyseekera <inform@lanka.gn.apc.org>,

"Taipei Women's Rescue Foundation" <twr95@ms4.hinet.net>,

=?ISO-2022-JP?B?GyRCQ1NFRDdDTX07Uhs0QiA=?=<erimomo@jca.ax.apc.org>

Subject: Fw: Re: Draft Charter of Women's Tribunal 2000

Message-Id: <3825A55832A.72C5YAYORI@mail.jca.apc.org>

MIME-Version: 1.0

Content-Transfer-Encoding: 8bit

X-Mailer: Becky! ver 1.25.04

Content-Transfer-Encoding: 8bit

Content-Type: text/plain; charset=US-ASCII

Content-Length: 16307

X-Mozilla-Status: 9001

Dear Friends,

This is the draft charter of the Women's Tribunal 2000 prepared by

x 1 12 11/10

VAWW-NET Japan to be finalized at the International Organizing Committee meeting in Washington DC on November 10. I would like to ask you to give us any comments, suggestions and advices. Thank you. Yayori

Draft

THE CHARTER OF

WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL 2000

Preamble

The 20th century now coming to its close has been a century of war and violence. The Second World War brought to humankind an unprecedented scale of destruction and genocide in which vast numbers of women were made victims of sexual violence. But the lessons of this experience have not been learned sufficiently. We now witness inter-state wars and internal armed conflicts breaking out one after another in many places in the world, sacrificing innumerable people and hurting women physically and psychologically.

Japan's military sexual slavery (the so-called "comfort women" system) introduced in the Asia-Pacific War period (1931-45) was one of the most horrendous forms of wartime sexual violence known in this century. Now in the 1990s, survivors of this slavery have broken their silence, demanding that justice be done and their long denied human rights be restored to them. But even now, 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 truthful 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.

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. In the subsequent decades, the existing national and international systems of justice have failed to bring the perpetrators to justice.

Even prior to the outbreak of the Asia-Pacific War, there existed the

international humanitarian law and other international laws that prohibited wartime sexual violence including sexual slavery and provided for punishment of such acts as grave crimes. After the Second World War, more international instruments on human rights were adopted and enforced such as the Universal Declaration of Human Rights, the International Covenants on Human Rights and their protocols, and the Convention on the Elimination of All Forms of Discrimination against Women, all of which made it mandatory for the international community and the nation states to protect human rights. Violence against women was singled out as violation of women's human rights in the Vienna Declaration adopted at the World Conference on Human Rights in 1993, which led in the same year to the adoption by the UN General Assembly of the Declaration on Elimination of Violence Against Women.

Further, the Beijing Platform of Action adopted at the Fourth World Conference on Women in 1995 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. The International War Crimes Tribunals for the Former Yugoslavia and Rwanda were established by the United Nations in the early 1990s and have prosecuted those who were responsible for violence against women. The International Criminal Court now being established will cover under its jurisdiction violence against women during war and armed conflicts though it will not handle crimes committed before its establishment.

In conformity with these international instruments of universal human rights and women's human rights adopted by the international community, it is 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.

276 Acting in pursuant to this responsibility, 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) hereby constitute the International Organizing

Committee, and establish Women's International War Crimes Tribunal.

The task of the Tribunal is to disclose facts and truths about sexual violence perpetrated by the Japanese Imperial Army as integral to Japan's colonial domination and war of aggression of Asia, focusing on the sexual slavery it practiced through "comfort stations" which it organized throughout the region and where it abused a vast number of women as "comfort women." The Tribunal does not apply statute of limitation and clarifies the legal responsibility of the state and individuals for such crimes. Its objective is 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.

The Tribunal is not a court under state sovereignty or any other public authority. It is the people's international tribunal established on women's initiative. It will give judgements based on the principles of women's 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. The Tribunal has no legal powers to enforce its judgements. Its judgements are based on international law and gender justice and thus carry the moral authority that demands their wide acceptance and enforcement by the international community and national governments.

We are convinced that the Tribunal, which will be held in the last month of the 20th century, will contribute toward creating a 21st century and a new millennium free of war and violence against women. The full records of the tribunal proceedings will be let known to the world as indelible records of the 20th century history.

*not the
end
facilitate -
hope.*

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") and will conduct a public trial in Tokyo, Japan, on the 8th through 10th December 2000 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

Handwritten notes and markings at the bottom of the page, including a large 'X' and various illegible scribbles.

War.

Article 2

Scope of the Tribunal

The Tribunal shall try crimes of serious violations of women's human rights committed against international humanitarian law and other international laws such as rape, sexual slavery, enforced prostitution 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 individually held responsible for the crime.
2. Those who have concealed evidence of the crimes in Article 2 shall be individually held responsible.
3. The 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 and the superior failed to take the necessary and reasonable measures to prevent such acts.
 - b. the Superior or Commander knew, or had reason to know, that the subordinate had committed such acts and the superior failed to take the necessary and reasonable measures to punish the perpetrators thereof.

4. Persons holding official positions shall not be relieved of criminal responsibility nor mitigated punishment because of being in those positions.

5. An accused is criminally responsible even if the crimes are committed in pursuant to an order of a Superior or of a Government.

Article 5

State Responsibility

When a state is in serious breach of an international obligation of essential importance for the 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 4;
- 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 6

Territorial and temporal scope of the Tribunal

1. The territorial scope 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 scope 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 that the Tribunal shall try shall not be subject to any statute of

limitations, for they are in breach of international humanitarian law and other international laws.

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 humanitarian and human rights laws and international criminal laws
- e. experience in dealing with crimes of gender and sexual violence

Article 9

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 10

Investigation and indictments

1. The Prosecutors shall initiate investigation prior to the public trial of the Tribunal on the basis of information received from individuals, survivors, NGOs or any other interested source.

2. The prosecutors shall submit indictments to the Tribunal when, based on their investigation, they decide they have reasonable evidence.

Article 11

The Proceedings (or the Hearing or Process or Public Trial?)

1. The Tribunal shall admit the indictments from the prosecutors and commence hearings accordingly.

2. The hearings shall be carried out based on the evidence that the prosecutors submit.
3. The process of examining evidence shall be sensitive to gender and cultural issues and to the trauma faced by the victims.
4. The hearings shall be public.
5. The working languages of the Tribunal shall be English. Translation and interpretation into other languages shall be provided as per needs.

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

Request to the accused to be present at the Tribunal

The Tribunal shall request the individuals who are responsible for the crimes referred to in Article 2 and/or their attorneys be present at the Tribunal to submit evidence and make oral statements.

Article 14

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.

Tokyo 155-0032 Japan

Tel 813-3412-2775 Fax 813-3412-2765

Yayori Matsui <yayori@jca.apc.org>

3-9-5-203 Daizawa, Setagaya-ku,

Tokyo 155-0032 Japan

Tel 813-3412-2775 Fax 813-3412-2765

Yayori Matsui <yayori@jca.apc.org>

3-9-5-203 Daizawa, Setagaya-ku,

Tokyo 155-0032 Japan

Tel 813-3412-2775 Fax 813-3412-2765
