

Draft **THE CHARTER / STATUTE OF
THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL 2000**

The 2nd draft by VAWW-NET Japan
(As of April 23, 1999)

Preamble
(to be drafted)

*(The 4th draft will be
submitted (not English
translation is not available)*

Article 1

Establishment of the Women's International War Crimes Tribunal

The Women's International War Crimes Tribunal ("the Tribunal") is hereby established by the International Organizing Committee for the Tribunal in Tokyo from December 8 to December 10 of 2000 for the just and prompt trial to prosecute the responsible for crimes of sexual violence against women, especially military sexual slavery (so-called "comfort women" system) committed by the Japanese Imperial Army before and during the Second World War.

The International Organizing Committee for the Tribunal is consisted of the organization of the offending country (Japan), organizations of the victimized countries (Korea, China, Taiwan, the Philippines, Indonesia and the Democratic People's Republic of Korea) and the International Advisory Committee.

Article 2

Jurisdiction(Competence?) of the Tribunal

The Tribunal shall have the power to prosecute persons and the state(State?) responsible for serious violations of international humanitarian law against women committed with respect to the following crimes:

- (a) Crimes against humanity;
- (b) War crimes;
- (c) The crime of genocide

Article 3

Violence against Women

Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence which violates women's dignity and sexual autonomy against any (civilian) women of (comparable gravity) constitutes both crime against humanity and war crimes when they were committed as part of a widespread or systematic attack.

The Tribunal shall in particular prosecute sexual slavery, rape, enforced prostitution, and other sexual violence against women.

Article 4

Personal jurisdiction

The Tribunal shall have jurisdiction over natural persons(including dead persons), legal persons

and the state pursuant to the provisions of the present Charter / Statute.

Article 5

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 articles 2 and 3 of the present Charter / Statute, shall be individually held responsible for the crime.
2. The official position of any accused person, whether as Head of State or Government or as a military commander or a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

Article 6

Criminal responsibility of superiors and subordinates(in system of command)

1. The fact that any of the acts referred to in articles 2 and 3 of the present Charter / Statute was committed by a subordinate does not relieve his superior of criminal responsibility, if the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
2. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment, if the Tribunal determines that justice so requires.

Article 7

State Responsibility

1. A state shall be criminally responsible for when it failed to restrain its military force from committing a crime referred to in articles 2 and 3 of the present Charter / Statute and its act constitutes a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery and genocide.
2. A state shall be responsible additionally for its negligence, if it is recognized that it has concealed (or distorted) the facts concerning the above written crimes, has failed to punish the responsible and pay reparations to the victims and intentionally or unintentionally has neglected to relieve its responsibility.

Article 8

Territorial and temporal jurisdiction

1. The territorial jurisdiction of the Tribunal shall extend to the areas of East Asia including the Korean Peninsula and China, South-East Asia including the Philippines and Indonesia as well as the Pacific islands.
2. The temporal jurisdiction of the Tribunal shall extend from before and during the Second World War to the present day as long as the aftereffects of the crimes can be observed.

Article 9

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 10

Organization of the Tribunal

1. The Tribunal shall consist of the following:
 - (a) The Judges,
 - (b) The Prosecutors, and
 - (c) A Registry.
2. The International Organizing Committee shall appoint the members taking into account the gender balance.

Article 11

The judges

1. The Tribunal shall be composed of twelve independent judges and, in the selection of judges by the International Organizing Committee, the following shall be taken into account the need for:
 - (a) The majority shall be represented by women;
 - (b) Equitable geographical representation; and
 - (c) Persons who made a great contribution in establishing women's human rights, and gained world reputation
 - (d) Persons who have professional knowledge and experience of international criminal laws, international humanitarian laws and international human rights laws
2. The President and Vice-Presidents shall be elected by a majority of judges.

Article 12

The Prosecutor

1. The Tribunal shall be composed of three prosecutors, of whom one will serve as chief prosecutor and, in the selection of prosecutors by the International Organizing Committee, the following shall be taken into account the need for:
 - (a) The majority shall be represented by women;
 - (b) Equitable geographical representation; and
 - (c) Persons who have professional knowledge and experience in international criminal law, international humanitarian law and international human rights law.
2. The Prosecutor shall be responsible for the investigation and prosecution of persons and the state responsible for crimes pursuant to the provisions of the present Charter / Statute.
3. The Prosecutor shall, upon a determination that a prima facie case exists, initiate prosecution on the basis of information obtained from any source.

Article 13
The Registry

The Registry shall be responsible for the administration and servicing of the Tribunal.

Article 14
Rules of procedure and evidence

The Tribunal shall accept the most of the following evidence. Those shall compose part of the records of the Tribunal.

- (a) Written evidences: official documents, affidavits / depositions, signed statements, diaries, letters/notes or other documents, experts' views, photos and other visual documents
- (b) Witnesses : victims' testimonies, oral statements and expert witnesses
- (c) Material evidences: ?

Article 15
Commencement and conduct of trial proceedings

- 1. The Tribunal shall ensure that a trial is fair and expeditious.
- 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 in accordance with the circumstances.
- 4. The Tribunal shall request the accused to appear in court, read the indictment and satisfy itself that the rights of the accused are respected.
- 5. In case the accused is unable or refuses to appear in court, the Tribunal shall appoint the defense counsel who represent the accused.

Article 16
Rights of the accused

- 1. All persons shall be equal before the Tribunal.
- 2. The accused shall be entitled to a fair and public hearing, subject to article 17 of the Charter / Statute.
- 3. The accused shall have the right to be represented by defense counsel.
- 4. The accused shall be presumed innocent until proved guilty according to the provisions of the present Charter / Statute.

Article 17
Protection of victims and witnesses (and participation?)

- 1. The Tribunal shall provide the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.
- 2. The Tribunal shall have regard to the nature of crime where it involves sexual or gender violence and shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. These measures shall not be against

the rights of the accused and the fair and just proceedings.

Article 18 Judgments

1. The Tribunal shall pronounce judgments on persons and the state convicted of any of the crimes referred to in articles 2 and 3 of the present Charter / Statute.
2. The judgment 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 in writing, to which separate or dissenting opinions may be appended.
3. The Tribunal shall have jurisdiction to order convicted persons or the state offer reparation to the victims. Reparation includes restitution, compensation and rehabilitation.

Article 19 Penalties

The Tribunal may impose the following penalties:

1. Imprisonment not exceed a maximum of 30 years, or a life imprisonment when justified by the extreme gravity of the crime.
2. A fine
3. A forfeiture of property
4. Re-education concerning the women's human rights including violence against women

Article 20 Enforcement of judgments

1. The Tribunal is not the court under state sovereignty; accordingly it has no power to enforce the judgments.
2. Copies of the judgments shall be sent to the accused or his / her attorney, the government of Japan, the governments of the concerned nations, the United Nations High Commissioner for Human Rights, and make them widely known to be left as historical documents.

NOTE:

- * This draft has been written by VAWW-NET Japan with cooperation of lawyers, based on the Charter of the Tokyo Trial, the Statute 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.
- ** It should be decided which to use, the charter or statute.
- *** Article 7 State Responsibility is taken from the draft of State Responsibility by UN ILC.
- **** Article 14 Procedure of Evidence should be further examined.
- ***** Further consideration of gender perspective is needed.

*The draft will be finalized after being reviewed at two more meetings (a public and a lawyers' meetings) and be proposed as the Japanese draft at the International Seminar in Seoul (June 4-5, 1999)
Any comments or suggestions to this second draft are welcomed.*



Violence Against Woman
In War Network Japan

fax; +81-3-5337-4088
e-mail; vaww-net-japan@jca.ax.apc.org
URL; http://www.jca.ax.apc.org/~vawwjs