

Summary of Findings

Before the

Women's International War Crimes Tribunal 2000 for

the Trial of Japanese Military Sexual Slavery

in the matter of

THE PROSECUTORS AND THE PEOPLES OF THE

ASIA-PACIFIC REGION V. EMPEROR HIROHITO et al.

AND THE GOVERNMENT OF JAPAN

Summary of Findings

12 December 2000

Judge Gabrielle Kirk McDonald, Presiding

Judge Carmen Argibay

Judge Christine Chinkin

Judge Willy Mutunga

BREAKING THE HISTORY OF SILENCE

1. In the early 1990s, Asian women began to break almost five decades of painful silence to demand apology and compensation for the atrocities they and others suffered under Japanese military sexual slavery during the War in the 1930s and 1940s in the Asia Pacific region. The courageous revelations of the victimized survivors, euphemistically called "comfort women", inspired hundreds more survivors, throughout the Asia Pacific region, to speak out. Together, they have awakened the world to the horror of the Japanese military's institutionalization of rape, sexual slavery, trafficking, torture and other forms of sexual violence inflicted upon an estimated minimum of 200,000 girls and women. Robbed of their youth and their future, they were conscripted and trafficked through force, coercion, and deception and confined to "comfort stations" or, more accurately, sexual slavery facilities, where Japanese troops were situated, including on the front lines.

2. Listen to the voices of some of these survivors:

I don't want to die as the ghost of a virgin. Mun Pil-gi, Korea

We went back home and we were crying. We couldn't tell anyone or we would be executed. It was so shameful so we dug a deep hole and covered it. Maxima Regala Dela Cruz, Philippines

I lost my life. I was regarded as a dirty woman. I had no means of supporting myself and my job opportunities were extremely limited. I suffered terribly. The next generation of Japanese people must know my suffering that their parents did such bad things. Teng-Kao Pao-Chu, Taiwan

My husband said, 'it is better to have a left over dog than a left over person.' Belen Alonso Sagun, Philippines

I obeyed in order to live. Mang-Mei Lu, Taiwan

I was a virgin. Ten men raped me. One got off and another replaced him. They treated us like animals. Blood came out of our vaginas. I couldn't walk after. Ms Suhanah, Indonesia

We want Japan to ask for forgiveness. Yuan Zhulin, China

We want justice. We want the Japanese government to take responsibility... What we are saying is the truth. We didn't come here to lie. We didn't come here to see Japan. We came here to tell the truth. Esmeralda Boe, East Timor

3. The courage of these survivors has inspired victims of other, more recent sexual atrocities to speak out. Human rights advocates and scholars worldwide have mobilized to seek justice. In this way, these women have contributed to the emergence of a larger movement for women's human rights to be respected, to end impunity for such crimes and to repudiate the notion that sexual abuse of women is an inevitable consequence of war and conquest.

4. The Women's International War Crimes Tribunal 2000 on Japan's Military Sexual Slavery, convened at the very end of the twentieth century, is the culmination of nearly a decade of work by and on behalf of the victimized survivors. The Tribunal was established as a result of the failure of states to discharge their responsibility to accord justice. Initial responsibility for this failure lies with the World War II Allies who did not prosecute Japanese officials for these crimes before the International Criminal Tribunal for the Far East, April 1946 - November 1948 (IMTFE), despite the fact that they possessed evidence of the sexual slavery. That a court, especially an internationally constituted court, could ignore a systematic atrocity of this dimension is unconscionable. However primary responsibility lies with the state of Japan for its continuing failure over 55 years to prosecute, apologize and provide reparations and other meaningful remedies. This inaction has persisted despite repeated demands since 1990 by the survivors, the careful investigations of two United Nations Special Rapporteurs, and the formal exhortations of the international community.

5. This Tribunal was established out of the conviction that these failures must not be allowed to silence the voices of the survivors, nor obscure accountability for such crimes against humanity. It was established to redress the historic tendency to trivialize, excuse, marginalize and obfuscate crimes against women, particularly sexual crimes, and even more so when they are committed against non-white women. Finally, this Tribunal was established out of the conviction, expressed over and over again by the brave yet tormented survivors in the latter stages of their lives, that acknowledging and assigning responsibility for the crimes committed against them will help to ensure that they live out their remaining years in peace.

This is done with the hope and expectation that such atrocities will never happen again. The Tribunal emphasizes that this is not a trial of the Japanese people. Individual accountability for violations of international humanitarian law precludes ascribing collective guilt. The Tribunal has no intention of deviating from that important principle.

6. This is a People's Tribunal set up by the voices of global civil society. The authority for this Tribunal comes not from a state or intergovernmental organization but from the peoples of the Asia Pacific region and, indeed, the peoples of the world to whom Japan owes a duty under international law to render account. Some will say this Tribunal lacks due process guarantees. It cannot and does not purport to provide such guarantees. Further, this Tribunal steps into the breach left by states and does not purport to replace their role. The power of the Tribunal, like so many human rights initiatives, lies in its capacity to examine the evidence and develop an enduring historical record. In so doing, it is hoped to bring the government of Japan to recognize that the greatest shame lies in not admitting its full legal responsibility and providing redress.

7. This People's Tribunal has been brought into existence by an International Organizing Committee (IOC) chaired by representatives from Japan, the Philippines and South Korea, each of whom has been deeply involved since 1991 in assisting the survivors to give voice to their experiences and to have these voices heard. Their goal, as expressed by the organizers, is "not vengeance but justice... not only for the survivors, but for those who have perished and for generations to come." The Tribunal sat in Tokyo from December 8-12, 2000.

8. The IOC and the prosecutors drafted the Charter of the Tribunal, which was approved by the judges. Article 2 establishes jurisdiction over crimes against humanity, including but not limited to sexual slavery, rape, and other forms of sexual violence, enslavement, torture, deportation, persecution, murder and extermination. In article 14 the Charter declares the obligation to state clearly, based on the evidence presented, whether each accused is guilty or not guilty or whether there is insufficient evidence upon which to make such a judgment.

9. The presentations and indictments before this Tribunal have been prepared by interdisciplinary teams led by country legal prosecutors from East Timor, Indonesia, Japan, Malaysia, the Netherlands, North and South Korea (jointly), the People's Republic of China, the Philippines, and Taiwan who have labored separately and together for over two years to bring this Tribunal to fruition. The country prosecutors were joined during the past year by two chief prosecutors whose participation affirmed the interest in, and commitment of, the international community to these proceedings. These chief prosecutors submitted a composite indictment to which all the country prosecutors joined.

10. The Tribunal is called upon to determine the responsibility of various high-ranking officials of the Japanese government and military, including Emperor Hirohito for sexual slavery and rape as crimes against humanity. It is important to emphasize that none of the accused have faced charges arising out of the events of sexual slavery. In this regard, the Tribunal sits to do what the IMTFE, the original Tokyo Tribunal, failed to do. Therefore the Tokyo Tribunal 2000 will apply the then applicable law, adjudge the accused, and accept as established the relevant legal and factual findings of the IMTFE.

11. The Charter of the Tokyo Tribunal 2000 also gives jurisdiction over breaches of state responsibility flowing from the commission of international wrongs. In this way the Tribunal uniquely combines individual criminal culpability with state responsibility. Under article 4, international wrongs include concealment or failure to find and disclose the truth concerning these crimes; failure to prosecute and provide reparations; failure to take measures to protect the integrity, well being and dignity of the human person; discrimination; and failure to take the necessary measures to prevent recurrence.

12. Article 14 authorizes the Tribunal to make recommendations regarding the responsibility of persons and states to offer redress to those victimized, including apology, restitution, compensation and rehabilitation.

13. The government of Japan was served with notice of these proceedings on November 9, 2000 and was invited to attend and participate. It failed to respond to the invitation. The Tribunal nevertheless heard the arguments of Japanese attorneys acting as amicus curiae and considered other sources that put forward the positions that have been espoused by the government of Japan.

14. Over 75 survivors were present at the proceedings of the Tribunal, seeking justice not only for themselves but also for an indeterminable number of girls and women who did not survive or who still live in silence. Many testified in the question of how human beings can be so inhuman. In addition to the testimonies of the survivors, the Tribunal heard the testimonies of historians, legal and other experts, and of two Japanese former soldiers who testified to their participation in these atrocities. The Tribunal received documentary evidence from memoirs and from the limited official documentation. This documentation had survived the Japanese military's pre-surrender destruction of documents and has been voluntarily released by the government of Japan and the various Allied states. The Tribunal appreciates the courage and dignity of the survivors who offered their eloquent testimony as well as the impressive efforts of the prosecutor teams to provide the evidence in a comprehensive, effective and well-ordered manner. The Tribunal also appreciates the willingness to testify of the former soldiers and their openness.

15. The Judges thank the IOC, the Registrar and all other Tribunal officials whose efforts ensured the smooth and efficient running of the proceedings.

16. Each of the judges is here out of profound respect for the collective will of peoples and for the fundamental role of the rule of law in civil society. This People's Tribunal acts from the conviction that the cornerstone of the international and domestic rule of law is legal accountability - the calling into established norms of international law. To ignore such conduct is to invite its repetition and sustain a culture of impunity. This principle applies with particular force to accountability for crimes of sexual and gender violence.

17. Sexual violence against women is epidemic and intensifies in times of war in frequency and brutality. These proceedings demonstrate the institutionalization of sexual slavery of girls and women as an integral part of the Japanese military campaigns. Significant progress has been made in this decade toward recognizing and prosecuting crimes of sexual violence in the International Criminal Tribunals for the former Yugoslavia and Rwanda. This Tribunal is another step towards ending impunity and reversing the gross disregard of the bodily integrity and personal dignity, indeed the very humanity of women.

18. A constant theme throughout the testimony was that the pain of women who were the victims of sexual violence was exacerbated by their rejection on returning to their own communities. They were forced to suffer in shame and silence as a consequence of sexist attitudes that saw them as responsible for their own tragedies. The findings of the Tribunal will contribute to the appropriate attribution of responsibility and assist in changing the worldwide pattern of sexual stereotyping that continues to be pervasive today.

19. What follows is a summary of factual and legal findings based on the evidence heard and received by the Tribunal during its proceedings. Judgment will be issued on March 8, 2001, International Women's Day.

PRELIMINARY FACTUAL FINDINGS

The "Comfort Women System"

20. The first military "comfort station" was established in March 1932 in Shanghai, China after Japanese invasion. The institutionalization of the comfort women system was the Japanese government's response to

the outrage generated by the massacres, rapes, and pillage of Nanking, known as the "rape of Nanking." As a result, other sexual slavery facilities and a complex trafficking network were established to compel women into providing sexual *service* for the Japanese military wherever Japanese soldiers were found. Procuring and securing women for these stations was an integral part of the war strategy, admittedly intended to deter open rape in occupied territory, limit anti-Japanese resistance among the local populace, avoid international disgrace and protect the Japanese soldiers from venereal disease. Women and girls were forced or coerced into these stations, often "recruited" by deceptive promises. The poorest were frequent targets of official or officially sanctioned recruitment.

21. Their enslavement involved repeated rapes, mutilations, and other tortures. They suffered inhumane conditions, including inadequate food, water, hygienic facilities, and lack of ventilation. Conditions were horrendous. Women testified to living in conditions surrounded by rats, lice, disease, and filth. Beatings, psychological torture, isolation, and other mistreatment were the norm. Pregnancy as a result of rapes, forced abortion, and loss of reproductive capacity were suffered by many of the "comfort women." The effect of this unimaginably debilitating treatment and of the failure of the government of Japan to acknowledge, compensate and otherwise repair its crimes had, until recently consigned most of these brave women to a life of shame, isolation, poverty and relentless suffering.

LEGAL FINDINGS

Crimes Against Humanity

22. The Prosecutors charge the Emperor Hirohito and other high-ranking Japanese military and political officials with responsibility for crimes against humanity in approving, condoning and failing to prevent the rape and sexual slavery of women of the countries of the Asia-Pacific subjugated by the Japanese military during World War II. Due to the shortness of time between receiving the prosecutors* extensive documentation and witness testimony and rendering these Preliminary Findings, the Judges decided to focus on evaluating the responsibility of the key accused, the Emperor Hirohito, for rape and the system of military sexual slavery known as "comfort women". With respect to the remaining defendants, we respectfully defer issuing our findings until the final Judgment on March 8, 2001, trusting that survivors and prosecutors and the peoples of Asia-Pacific will understand that we do this in the spirit of justice.

23. Accordingly, we have carefully reviewed the law of 1945 and the prosecutors* submissions and arguments, including the contention of the government of Japan that his unspeakable violence was no criminalized by 1945. We find that crimes against humanity - amongst the most egregious of violations - should have been prosecuted by the post-war Tribunals and have now been properly prosecuted in this case. We further find that rape and sexual slavery, when committed on a widespread, systematic or largescale basis, constitute crimes against humanity. By 1945, both rape and enslavement had been long recongized as heinous crimes under international law. Sexual slavery is not a new crime but rather a particularly outrageous, invasive and devastating form of enslavement defined as the "exercise of any or all of the powers of ownership over a person." Enslavement includes forced or deceptive transfer, forced labor, and other expropriation of a human being as one*s property. The conscription of the "comfort women" as part of the *material* of war represents the institutionalization of sexual slavery on an unprecedented scale, rooted in profoundly misogynistic and racist attitudes, all too common in the world today, directed at predominantly poor and non-Japanese women of the Asia-Pacific region.

24. Based on our consideration of the evidence submitted to this Tribunal, the Judges also find that the Emperor Hirohito criminally responsible for crimes against humanity. We do so first because he was the Supreme Commander of the Army and Navy, with the responsibility and power to ensure that his subordinates obeyed international law and sopped engaging in sexual violence. He was not a mere puppet but rather exercised ultimate decision-making authority as the war progressed. The Judges further find that

the Emperor was aware of the fact that his troops committed atrocities, including rape and sexual violence, during the "Rape of Nanking" on the basis that this attack generated both international disgrace and acted as an obstacle to his aim of subduing conquered populations. Rather than take all necessary steps to prevent rape, including through meaningful sanction, investigation and punishment, he consciously approved or, at least, negligently permitted, the massive effort to perpetuate and conceal rape and sexual slavery through the continuing extension of the "comfort women" system. Moreover, we find that he knew, or should have known, that a system of this kind of scope was not voluntary.

State Responsibility

25. Under general international law, a state is internationally responsible for any wrongful act that is attributable to it and that has done damage to the legitimate interests of others. A state commits an internationally wrongful act when it acts in violation of an applicable rule of international law. The state of Japan has acted in violation of both its treaty obligations and obligations under customary international law. An act in violation of a state's international obligations but which is lawful under its internal law is not thereby rendered lawful in international law.

26. The conduct of an organ or agent of the state will be considered as an act of that state under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international character and whether it holds a superior or a subordinate position in the organization of the state. Armed forces are agents of the state. Responsibility attaches to a state not only for wrongful acts and omissions within its territory but also for the wrongful acts and omissions of its organs, agencies, officials, and employees acting outside the territory of that state.

27. Japan has violated treaty obligations including the 1907 Hague Convention Respecting the Laws and Customs of War on land, the 1921 International Convention for the Suppression of the Traffic in Women and Children, and the 1930 ILO Convention Concerning Forced Labour. It is also violated norms of customary international law, including those prescribed in the 1907 Hague Convention and 1926 Slavery Convention. Further, in the 1951 San Francisco Peace Treaty, Japan accepted the Judgement of the IMTFE.

28. The failure of the Japanese state at the end of the Second World War to return the comfort women to their own countries was in direct violation of the Hague Regulations.

29. After the Second World War, Japan signed a number of treaties, including the San Francisco Peace Treaty, the Settlement between Netherlands and Japan, Settlement Reparations Agreement between the Philippines and Japan, the Treaty on Basic Relations between Japan and Republic of Korea, and the Agreement on the Settlement of Problems Concerning Property and Claims Between Japan and the Republic of Korea. The Tribunal finds that the Peace Treaties are not applicable in the current context as states cannot agree by treaty to waive the liability of another state for crimes against humanity.

30. The Tribunal finds the arguments of the Chief Prosecutor's regarding the inherent gender bias underlying the Peace Treaties as persuasive. The Tribunal notes that women, either as individuals or as a group, did not have an equal voice or equal status to men at the time of the conclusion of the Peace Treaties with the direct consequence that the issues of military sexual slavery and rape were left unaddressed at that time and formed no part of the background to the negotiations and ultimate resolution of the Peace Treaties. The Tribunal considers that such gender blindness in international peace processes contribute to the continuing culture of impunity for crimes perpetrated against women in armed conflict.

REPARATIONS

I shiver at the memory of the soldiers; they have to kneel in front of us and beg us to forgive them...They should apologize and apologize. Survivor Witness from Korea

31. The testimony of the survivors revealed the constant re-infliction of pain and reinforcement of secrecy and shame as a result of the government of Japan's failure to fulfill its fundamental legal responsibility. We note that for over 50 years, the government of Japan has violated the principle that reparations be "adequate, effective and prompt."

32. In examining the government of Japan's obligation to provide reparations, we refer to the longstanding principle of international law that the state must provide a remedy for its international wrongs. The state's responsibility is to provide compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Reparation includes any or all forms that are applicable to the situation and cover all injuries suffered by the victim.

33. Successive governments of Japan have continually violated the duty to acknowledge its wrongdoing, even until this day. The prosecutors and many of the survivor witnesses underscored the demand for a meaningful apology - that is, an apology based on full acknowledgement of the wrongdoing and clear acceptance of legal responsibility. We find, however, that the official Japanese position has moved first from the destruction of inculcating documents, to silence, to blatantly false denials of military involvement, to a partial "apology" which does not comport with international obligation. The state of Japan's deliberate resistance to fully acknowledge its wrongdoing has perpetuated the shame and silence, inflicting indescribable pain upon the survivors and depriving them of the possibility of living in peace.

34. There is an obligation to recognize the wrongdoing and a need to create an adequate public historical record to assure the non-recurrence of such atrocities in future generations. The Tribunal finds that the efforts of the government of Japan to educate the people of Japan and the next generations are sorely lacking.

35. It is incumbent on the Japanese government to take vigorous measures, in consultation with the survivors, to restore their dignity in the eyes of society. It is further necessary for the Japanese government to compensate for "any economically assessable damages", both material and emotional, resulting from both the initial violence and enslavement and the continuing violations. Under international law, compensation must come from the government and must be adequate to the material harm, lost opportunities and emotional suffering of the victims, their families and close associates. The Tribunal finds that the Asian Women's Fund, vehemently rejected by most of the survivors who testified, does not satisfy these criteria.

36. The Tribunal finds that the delay in making reparations has inflicted additional and continuing suffering in the nature of shame, anger, sorrow, isolation, economic hardship and impoverishment, unredressed health problems and the inability to find peace. These profound losses are also subject to compensation.

37. Rehabilitation should also be provided for medical and psychological care, as well as legal and social services.

CONCLUSIONS

38. After considering the extensive documentation received by the Tribunal during the course of these proceedings, and in reviewing the applicable law as it stood at the time the crimes were committed, the Tribunal rendered its summary of findings. The final Judgment will be delivered on March 8, 2001.

39. The Tribunal finds, based on the evidence before it, that the Prosecution has proved its case against the accused Emperor Hirohito, and finds him guilty of responsibility for rape and sexual slavery as a crime against humanity, under Counts 1-2 of the Common Indictment, and guilty of rape as a crime against

humanity under Count 3 of the Common Indictment. Additionally, the Judges determine that the government of Japan has incurred state responsibility, as recognized under Article 4 of the Charter, for its establishment and maintenance of the comfort system.

40. As to the other accused, the Judges have not had sufficient time to digest the voluminous evidence presented to it to determine criminal liability at this stage. Therefore, individual and superior responsibility of the other accused will be determined in the final Judgment.

(Source: VAWW- NET Japan <http://home.att.ne.jp/star/tribunal/>)