

△ 코소보 (변호사 증인)

변호사로 여성단체를 조직하여 이끌고 있다. 알바니아 여성들을 세르비아인들에게 강간당했다. 이런 강간을 조직적인 전쟁의 도구로 사용되었다. 정부차원에서 이루어졌다. 코소보는 강간을 공개적으로 말하기를 꺼려한다.

강간을 당한 10명의 14~60세의 여성 중 8명이 자살했다. 그 정도로 자살한 여성이 많다.

△ 세에라리온 (메시 보로 코코아 증인)

5명의 자녀를 두었고 28년 동안 교사를 했다. 세에라리온은 1991년 국가가 성립되었고 참여 민주주의 경력을 가진 나라이다. 반항군에 대한 전쟁으로 경제기반이 붕괴되었다. 1991년 시작된 내전으로 인해 마을이 파괴되고 여성들이 강간, 납치되며 건강한 남성들도 강제징집과 노역으로 희생당하고 있다. 숲으로 피신하여 4일을 굶으며 숨어있었으나 10명의 반란군에게 강간당했다. 현재 상황에 우울하고 좌절하며 고통을 겪고 있다.

△ 팔레스타인 (여성학 교수)

이스라엘이 성립된 뒤 팔레스타인 여성들이 경험한 어려움은 말로 다 할 수 없다. 고문당하고, 상처받고, 감금당하고 있다. 이스라엘군에 체포되어 이유도 모른 채 감금당하고 고문당했다. 교수로서도 군부정책 때문에 괴롭힘을 당했다. 이스라엘이 원하는 대로 가르치지 않고 사실을 가르쳤기 때문이다. 1980년 다시 체포되었고 권리들을 박탈당했다. 운전면허증도 갖지 못하게 하고 연금상태에 놓이게 되었다. 성적모욕과 고문당했다. 죄목은 사람들을 동원해서 조직했다는 것이다.

● 전문가 논평

△ 하비다 호센

우리가 들은 폭력들은 동등한 당사자간에 이뤄진 일이 아니다. 한 쪽은 무장을 하고 한 쪽은 비무장 시민이라는 것이기에 더 심각하다. 군부가 국가를 대표하면서 일어난 일이라 해도 민간인을 보호하는 의무를 위반하는 일이다.

국가가 분열되고 분할되어 작은 집단이 출현하면서 기득권의 대항단체로 등장해도 결국 폭력집단이 되어간다. 정부는 이들의 출현을 방관하고 오히려 조장하기도 한다. 여성들의 권리를 지배하는 방향으로 전환하고 폭력이 가해져도 시정하지 않는 정부도 있다. 여성들의 권리를 박탈하는 세계화는 무력정치이다. 폭력의 세상에서 여성들은 적대적인 관계를 극복하고 국경과 제한을 넘어 우정으로 손을 잡고 있다.

△ 라디카 쿠마라스와미 (유엔인권위원회 특별보고관)

1995년 유엔에 일본군 위안부 보고를 했다. 현재에도 여성에 대한 전시 범법 행위가 여전하다. 남자들은 전쟁을 시작하고 여성들은 그 결과를 감당한다는 말이 지금도 전혀 달라지지 않았다.

증언자들이 여기를 떠날 때 절망속에서 떠나지 않기를 바란다. 여러분의 증언을 국제사회가 들었다. 여러분의 정의를 위해 우리는 노력할 것이기에 소망을 버리지 말기를 바란다. 우리가 왜 희망을 가져야 하는가? 국제사회가 다른 방법으로 처리할 수 있는 대책을 강구하기 때문이다. 다시 이런 일들이 일어나지 않도록 NGO들이 일하고 있다.

나는 유엔에 보고하겠다. 한국에 가서 처음 일본군'위안부' 이야기를 들었을 때, 그리고 오늘 이 자리에서 들은 이야기를 통해 '용기'라는 말이 무엇인지 다시 배우게 되었다.

□ 2000년법정 판결의 날(2000년 12월 12일, 동경 센타가야 청년회관)

● 국제실행위원회와 국제검사단의 요구: 우스티나 돌고폴, 패트리샤 셸러즈 (국제검사단)

: 아태지역에서 전쟁기간 동안에 일어났던 일들에 대한 종지부를 찍고자 한다. 일본 군부의 제도화되고 체계적인 강간과 성폭력 사태로 인하여 20여 만 명의 피해여성들의 삶이 유린되었고, 미래를 파괴시켰으며 그들의 공동체로부터 소외시켰다. 여기서 증언했던 피해자들은 다음과 같이 외친다.

“나는 처녀 귀신으로 죽고 싶지 않다.”
“전쟁이 끝나고 우리들이 당한 고통을 누구에게도 심지어 가족에게조차 말할 수 없었다.”
“일본인들이 나의 고통에 대해서 알아야 하며, 그들의 자손이 부모들이 저지른 죄를 알아야 한다.”
“일본에 구경하기 위해 오지 않았다. 정의를 위해서 왔다. 일본 정부는 책임을 져야한다”

2000년법정은 오직 민간인들의 노력에 의해서 개최되었다. 정부측에서 책임을 지지 않았다. 기존 전범법정에서 일본 정부가 기소되지 않았었기에 민간의 노력으로 법정이 이루어졌다. 1990년 초부터 희생자들이 촉구했었고, 유엔특별조사반이 조사를 했는데도 아무런 조치가 취해지지 않았다. 일본군 범죄자 대부분이 죽었지만 이런 불행이 반복되지 않기를 바라는 마음으로 피해자들이 가해자를 고발하는 증언을 하기 위해 성립된 법정이다.

국제법정의 권한은 국가들의 국제기구가 아닌 아태지역 민중들에게서 부여받은 권한을 지닌다. 국제 인권모임들이 그러하듯이 이런 범죄와 증언에 대해 증거를 남기고 조사하는데 그 의의를 둔다. 이 법정의 목표는 보복이 아닌 정의를 원한다. 이 정의는 희생자와 그 후손을 위한 것이다. 이 법정을 구성한 국제실행위원회와 국제공동검사단은 본 판사단에게 다음과 같이 요구한다.

- 1. 인도에 관한 사법권 설정
제시된 증거와 피해자 증언을 통해 들어난 세계 제2차대전 중에 일본이 여성들에게 저지른 고문, 강제 이송, 노예화, 살해, 강간 등을 현장 제 14조에 의거하여 판결해야 한다.
- 2. 일본정부, 고위 군관리, 전 일본국왕이 유죄인지 무죄인지 판결

본 법정은 성노예화 처벌에 대한 책임을 져야한다. 일본 전쟁범죄를 다루었던 국제 재판에서 하지 못했던 것을 국제법에 의거해서 판결해야 한다. 범죄 사실의 은폐, 증거자료의 소각, 피해자들에게 정당한 보상을 하지 않았던 행위, 피해자의 건강과 존엄성을 지켜주지 못한 것을 포함하여 판결해야 할 것이다.

이 모든 재판과정이 이루어지도록 힘쓴 실행위원회에 감사한다. 본 법정 검사단이 정의를 실현하기 위하여 최선을 다해 자료를 준비하고 발표한 것에 대해 존경을 표한다. 역사 속에 언제나 성폭력이 일어나고 특히 전쟁 중에는 더욱 그렇다고 하지만 정당화될 수는 없다. 르완다, 유고슬라비아는 최근에 일어난 일이라 그 죄상이 백일하에 드러났지만 2차 대전의 일본군 만행은 은폐되어 있었다. 이 만행이 되풀이되지 않도록 책임을 지는 것과 증인들이 이제 남은 삶이나마 존엄성을 유지하며 살아가도록 해주는 것이 우리의 의무이다.

● 판결: 가브리엘 맥도날드, 크리스틴 친킨, 카르멘 아비가이, 윌리 무룽기 (판사단)

이십만 명의 여성들이 세계 제2차대전 중 그리고 그 후에 위안소로 강제 징집되어 성행위를 강요당했다. 일본은 군대가 설치되는 곳마다 위안소를 설치하여 여성들을 감금하고, 성행위를 강요하였으며, 병에 걸려도 방치하였고, 영양결핍으로 죽어가도록 했다. 위안부들이 고국으로 귀향한 후에도 극도의 빈곤 속에서 살거나 자신의 피해 사실을 비밀에 붙인 채 살아왔다. 그럼에도 불구하고 일본정부는 모든 책임을 회피하고 있는 사실이다.

전쟁 발발시 1만 7명의 상해 주둔 일본군에 의해 점령지 여성들이 강간당하고 살해당하는 사태가 발생하자 위안부를 파견해 강간 수를 줄이고자 상해에 첫 위안소를 설치했다.

전쟁이 확대되고 장기화되자 아태 전역에 위안소가 설치되기 시작했고 제도화되었다. 한국은 일본의 식민지 상태였으므로 일본군 '위안부' 거의가 한국 여성이었다. 위안소는 일본전쟁 전략 중 하나였다.

요시미 교수의 증언에서 1949년 하타 총사령관의 위안부 요청이 내무성을 통해 각 부, 현에 전달된 기록에서 볼 수 있었듯이 위안소를 군부 최고장성이 준비했고 설치를 위한 제반사항을 허가해 준 증거를 보았다.

- 위안소 설치 요소
 - 1. 현지 여성들에 대한 강간방지 의도로 강간으로 인한 반일 감정 확산을 감소시키기 위한 것.
 - 2. 한국, 대만, 태국 등 식민지 여성들을 위안부로 징집시킬 수 있다.
 - 3. 일본군함으로 위안부를 이송하였고 주로 고향으로부터 먼 지역으로 이송되었다.
 - 4. 성노예 제도를 강화할 수 있었던 이유는 위안부들이 현지인과 의사소통이 불가

능하다는 것이다. 또 굶주림과 질병 등으로 탈출이 거의 불가능했다.

5. 일본군의 성병을 막기 위해 철저한 위생검사를 받은 일본군'위안부'를 데려와 위안소를 설치했다.
6. 위안소는 여성들만 수용하는 역할을 했다.
7. 공식적 정책에 의해 엄격히 통제되어 정보유출의 위험을 방지했다.
8. 위안소는 대저택, 군막소, 동굴, 시장 등 모든 장소를 사용했다.

일본군'위안부'를 이송하는데 군함을 사용했다는 것 자체가, 위안소 설치와 일본군'위안부' 모집에 군대와 정부가 정치적으로 관여해 노예화했다고 볼 수 있다.

일본 군인들의 일본군'위안부'와의 성행위는 계급에 따른 시간표에 의해 이루어졌다. 일본군'위안부'들은 건강진단을 정기적으로 받아 등급이 매겨졌으며 군부에 결과보고되었다. 일본군'위안부'의 건강진단은 치료가 아닌 관리 차원에서의 검진이었다. 일본군'위안부'들은 위안소를 당국의 허가없이 외출 시에도 군인이 동행하여 감시하였고 일본군'위안부'들은 성적 서비스뿐만 아니라 요리, 빨래, 삼질 등 노동에 시달리기도 했다.

일본군'위안부' 여성들은 성병이 생겨도 치료받을 수 없었다. 성병 방지와 피임을 위해 투입된 주사나 약으로 인해 임신이 영구적으로 불가능해지고, 강제 유산으로 심한 고통을 받았다.

한국, 중국, 대만, 필리핀, 말레이시아, 네덜란드, 인도네시아, 동티모르, 일본의 검사의 기소내용을 인정한다.

본 국제법정은 일본정부가 전쟁 말기에 이에 관련된 많은 문서들을 파괴했다는 증거를 보았다. 일부 남겨진 자료를 통해서 성노예화가 정부에 의해 진행된 것임을 보았다.

일본정부도 1993년 위안부 관련 문제들을 발표하였다. 사실도 시인하였다. 그러면서 이런 역사적 사실에 대해 유감이라고 했다. 그 '유감'은 사죄의 의미가 아니었으며 어떤 배상도 없었다.

본 법정에 제시된 증거와 조사 자료들은 물론 불충분하지만, 많은 지역에서 수많은 희생자들이 있었음이 명백하게 밝혀졌다.

무라야마 총리가 일본군'위안부'들에게 깊은 사과를 하고 국민기금을 마련하여 희생자들에게 배상하겠다고 했다. 그러나, 이 기금은 민간기금일 뿐이다. 일본정부가 책임을 지는 행위가 아니기에 피해자들도 모욕적이며 오히려 분노를 일으키게 한다고 했다. (이하 자세한 내용은 약식 판결문 참조)

3. 2000년법정 행사

○ 2000년 일본군성노예전범 여성국제법정 본법정 개막식

- 일시 : 2000년 12월 7일
- 장소 : 구단회관 대강당

12월 7일 구단회관 대강당에서는, 그동안 2000년법정을 함께 준비해왔던 한국, 북한, 일본, 중국, 필리핀, 대만, 네덜란드, 동티모르, 인도네시아 등 9개국을 포함하여 언론 기자 등 1200여 명의 참가자들이 모인 가운데 2시간동안 진행된 개막식은 한국 측의 기획과 준비(김선국)로 진행되었다. 한국(김윤옥 공동대표)과 일본, 필리핀 공동의 사회로 2000년법정 공동대표의 개회선언, 수석판사의 현장낭독에 이어 각 국가의 활동보고가 영상으로 소개되었으며, 끝으로 돌아가신 '위안부' 피해자들을 위한 추모회가 한국에서 참가한 무용가 강혜숙씨의 살풀이 춤과 헌화로 진행되어 장엄하면서도 2000년법정의 시작을 알리는 힘을 뿜어내는 개막식이 되었다.

○ 'SAY YES' Concert 아시아 문화의 밤

- 일시 : 2000년 12월 10일
- 장소 : 구단회관

2000년법정에 참가한 각 국가가 준비한 전통문화 공연과 노래 등 다양한 장르의 공연들이 미국에서 참가한 권희순 목사의 사회로 진행되어 1000여 명이 모여 약 2시간동안 할머니들과 참석한 모든 사람들에게 흥겨운 시간이 되었다. 이번 'SAY YES' Concert는 한국의 김선국이 기획·연출하였다. 또한, 사전마당에서는 'SAY YES'라고 적힌 여백에 2000년법정에 참가한 청년들이 꽃 불이기를 하면서 촛불의식과 아시아 청년선언을 낭독하기도 하였다.

○ 피해자들과와의 만남

- 일시 : 2000년 12월 11일
- 장소 : 구단회관 3층 진주홀

아시아 9개국의 일본군'위안부' 피해자들 약 70명과 국제공청회에 참석한 현재 무력갈등 아래의 성폭력 피해자들이 한자리에 모여 친교를 나누었다. 남북 피해자 할머니들이 함께 노래를 하였으며, 뒤이어 각 국의 피해자들이 노래를 하는 시간을 가짐으로써 흥겨운 잔치가 되었다. 특히, 한국의 이용녀 할머니의 노래로 시작한 춤과 노래는 분위기를 매우 흥겹게 하였다.

○ 연대시위

- 일시 : 2000년 12월 12일
- 장소 : 청년회관 앞마당

12월 12일 오후 판결이 끝난 직후, 시위참가자들은 약 200여 명 정도로 구성되어 1시간 가량 가두시위를 진행하였다. 한국 참가단의 일부는 판결문 낭독을 듣지 못하고 공항으로 출발해 시위에 참여하지 못하였으며, 저녁비행기로 출발하는 40여 명의 참가단들이 전체 거리시위 대열에 합류하지 못하고 행사장에 나타난 일본 우익들과 서로의 요구를 주장하며 30분간 대치하였다. 30분동안 준비해 온 플래카드를 펼쳐들고 힘껏 구호와 노래를 제창하였다.

○ 남북교류회

- 일시 : 2000년 12월 9일
- 장소 : 일본교육회관 9층

한국의 정대협 실행위원들과 북한의 종태위 위원, 재일동포가 한자리에 모여, 남북공동기소를 자축하는 자리로써, 남북이 함께 모여 그동안의 어려웠던 점을 이야기하며, 향후 어떻게 함께 할 것인가를 부담없이 이야기하는 자리였다. 식사를 시작하기 앞서, 윤정옥 공동대표 후 함께 연대할 내용들을 허심탄회하게 이야기하는 시간이었다. 식사 후 북한과 한국, 재일이 서로 노래를 주고받으며 남북공동기소의 뒷이야기를 나누었고, '우리의 소원은 통일' 노래로 마무리하였다.

○ 2000년 법정 한일 시민단체 간담회

- 일시 : 2000년 12월 10일
- 장소 : 구단회관 앞

전주 기독교살림여성회와 대구 시민모임의 책임역할로 진행된 시민단체 간담회는 당초 12월 14일 계획된 일정으로 본법정을 진행하는 과정에서 앞당겨져 시행되었다. 때문에 미처 일정이 바뀐 것을 연락받지 못한 단체가 있어 참가하는데 차질을 빚은 아쉬움이 남는다. 하지만, 일본군'위안부' 문제에 대해서 다양하게 고민과 운동을 해오는 단체들간의 만남을 통해서 앞으로 과제에 대한 다양한 모색과 그간 활동의 성과들을 챙겨내는 의미있는 자리였다. 그리고, 가해자와 피해자의 이해관계가 있는 양국의 활동가들의 연대를 통해 운동의 해결방안을 모색하는 것은 아주 뜻깊은 일들로 앞으로도 일본군'위안부' 문제를 둘러싼 정세를 정확하고 재빠르게 읽고 대응하는데 함께 연대할 것을 결의하는 장이 되었다.

○ 일본 내 입법활동을 위한 한일 시민단체들과의 만남

- 일시 : 2000년 12월 11일
- 장소 : 구단회관 호텔 125호실

2000년법정에 대한 평가를 통해 향후 일본정부가 위안부 문제를 어떻게 해결할 것인가를 토론하였다. 2000년법정 판결이 실효력을 가지려면 유엔의 권고안, 한일 각국의 입법화 노력, 일본내의 진상규명법안 통과, 역사교육의 필요 등이 있어야 함을 언급하고, 일본은 아시아만이 아닌, 세계여성들의 지원을 통해 문제해결에 대한 압력을 받을 것이라는 의견도 있었다. 또한, 아시아 피해국이 일본정부에게 압력을 가하는 것이 중요하며, 한국정부와 국회에게 정대협이 강력한 요청할 것을 부탁해왔다. 또한, 일왕을 처벌하는 것은 운동을 더 강화할 수도 있으며, 운동을 더 힘들게 할 수도 있다는 전망이 언급되기도 하였다. 향후 과제로는 일본의 우익에 대한 대응활동과 한일 양국의 입법화 활동이 강조되었다.

○ '청년의 힘으로 할머니를 당당하게' 한·일 청년포럼

- 일시 : 2000년 12월 9일
- 장소 : 와세다대학 22동 201호

한·일 청년들이 주축되어 진행된 이번 포럼에서는, 장소를 이동하여 참석해야 하는 상황에서도 2000년법정 참가단 중 40여 명이 참석하였으며, 일본측에서 20여 명이 참석하여 약 2시간 30분동안 진행되었다. 1부에서는 한국과 일본, 재일이 차례로 발제하였으며 질의응답이 있었다. 이후, 미국의 집단소송과 일본의 관부재판의 진행상황에 대해서 공유하는 시간을 가져 2000년법정 성사 후에 미·일의 재판으로 힘을 모을 것을 결의하는 장이 되었다. 끝으로 2000년법정을 참가하기 전에 이미 한일간의 청년들이 합의한 아시아 청년선언의 선언문을 채택하고 12월 10일 문화의 밤 행사 사전마당에서 결의문을 낭독하여 아시아 청년의 의지를 보여주고자 결정하였다.

○ 점심 선전전

- 일시 : 2000년 12월 8~9일
- 장소 : 구단회관 앞마당

대구시민모임의 준비로 본법정이 시작되는 12월 8~9일 이틀간 점심시간을 이용하여 30분 정도 구단회관 앞마당에서 진행되었는데, 10일부터는 행사장에 나타난 우익들의 위협적인 분위기로 행사장 출입이 통제되어 더 이상 진행되지 못했다. 점심 선전전에 2000년법정 사무국에서 적극적으로 결합하지 못하고 출입이 통제된 상황에서 점심 선전전 공간을 확보하는데 수동적이었던 아쉬움이 남았다.

4. 남북공동기소장

THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL ON JAPANES
MILITARY SEXUAL SLAVERY IN 2000

THE PROSECUTORS OF THE TRIBUNAL
(NORTH AND SOUTH OF KOREA)

Indictment and
Application Concerning State Responsibility of
the Government of Japan

[As amended on 10 December 2000]

(Part I: Individual Criminal Responsibility)

THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL ON JAPANES
MILITARY SEXUAL SLAVERY IN 2000

THE PROSECUTORS OF THE TRIBUNAL
(NORTH AND SOUTH OF KOREA

AGAINST

HIROHITO AND SEVEN OTHER INDIVIDUALS

INDICTMENT

The Prosecutors of North and South of Korea of the Women's International Wa
Crimes Tribunal on Japan's Military Sexual Slavery (hereinafter the Tribuna
pursuant to the authority granted under Article 11 of the Charter of the Tribunal,
charge:

HIROHITO,

Tojo Hideki, Minami Jiro, Itagaki Seishiro, OKAMURA YASUJI,
Umezu Yoshijiro, ANDO RIKICHI and Matsuyama YUzo

with war crimes and crimes against humanity, as set forth below:

Background

1.1 The acts committed by old Japan and its military against 'comfort
women'¹⁾ mainly of Korean origin during their occupation of Korea were an

¹ As a matter of terminology, the commonly used term 'comfort women' will be used for the English translation of the comparable word 'Ianhu' in Japanese and 'Wianbu' in Korean. In the Japanese, 'comfort women' refers to women whose duty was to provide sexual services for the pleasure of Japanese soldiers. This term is an insulting and euphemistic expression that conceals the reality that these women were 'sexual slaves' as will be shown below. It is problematic to use the term 'comfort stations' in the same context to refer to the places where women, after being recruited systematically by the Japanese Empire through deceit, abduction and other forcible methods, were continuously

systematic sexual slavery with specific social and historical background.

Japan's Forcible Occupation of Korea

1.2 While the Chosun Dynasty made efforts to convert Korea into a modern nation in the latter part of the nineteenth century, the Empire of Japan attempted to build a dominant position in Korea. Korea was strategically important for its geographical location forming a bridge into China, and also rich in human and material resources.

1.3 After the 'Meiji Restoration' in 1868, Japanese imperialism pursued an aggressive and expansionist policy against Korea, based on the *Seikanron* (doctrine of conquering Korea) which intended to subjugate Korea by force. To put this doctrine into reality, Japan strengthened state power under the slogan Rich State and Strong Military, while committing openly aggressive acts against Korea.

1.4 The 'Unyo' incident in 1875 brought about by Japan led to the conclusion of the unequal 'Treaty of Kangwha', giving preferential treatment to Japan. Subsequently, other unequal treaties were concluded between Korea and the Western Powers.

1.5 After the Sino-Japanese War (1894-1895), the predominant status of Japan in Korea was acknowledged in the Shimonoseki Treaty (1895). This status was guaranteed by the Treaty of Alliance with Great Britain of January 30, 1902²⁾ and the secret Taft-Katsura Agreement with the United States in 1905.

1.6 During the Russo-Japanese War in 1904, Japan sent 100,000 troops into Korea. Japan occupied completely Korea by force and secured a monopolistic position in Korea.

1.7 Relying upon its strong military power, Japan deprived Korea of its rights to diplomacy on the basis of the fabricated 1905 'Ulsa' five treaties. Japan further took away Korea's right to govern its own internal affairs through the

raped by Japanese soldiers and subjected to slavery. As Ms. Gay J. McDougall, Special Rapporteur for the United Nations Sub-Commission on Human Rights, pointed out, these places were, in fact, 'rape camps'. Systematic rape, sexual slavery and slavery-like practices during armed conflict, UN Doc. E/CN.4/Sub.2/1998/13, 22 June 1998, para. 1. Other terms for similar purposes are 'facilities of sexual slavery'.

In this sense, here will be used the terms 'comfort women' and 'comfort stations' in accordance with common usage, with the former in quotation marks. These words will be used interchangeably with the terms 'sexual slave' and 'sexual slavery' depending on the context. Further, the term military 'comfort women' is to be differentiated from 'Chongshindae' ('Taishintai' in Japanese) or 'Women's Voluntary Labor Corps' which included women conscripted as labor force for war efforts of the Japanese imperialism.

2 Martens, *Nouveau Recueil Gnal de Traits*, 2me Serie, vol. 30, p. 650.

manufactured 'Jungmi' seven Treaties of 1907 and dissolved the Korean National Army of no more than ten thousand soldiers. While holding the diplomatic, internal governance and military power, the Japanese imperialists invented the Annexation Treaty between Korea and Japan in 1910 and publicized their annexation of Japan.³⁾

1.8 Having occupied Korea, they imposed a military dictatorship without separation of powers as the main mode of their rule over Korea. They dispatched Japanese army and navy generals as governor-generals in accordance with the orders of the Emperor. The Japanese imperialists established a pyramid-type domination system with the Governor-General at its apex, a kind of absolute monarch, and exercised military rule over the Korean people. Japan stationed tens of thousands of its armed forces in Korea and set up huge military police forces to suppress the Korean people in addition to tens of thousands of police.

1.9 While Japan ruled Korea in an arbitrary and repressive manner, Korean people's struggle for independence continued unabated within and outside of Korea.

Japan's Policy to Eliminate Korean National Identity

1.10 In the latter period of Japanese forcible occupation, the Japanese imperialists pursued especially a policy of assimilation to annihilate the identity of Korean people. They claimed one and the same ancestry and roots and enforced such policies as the Japanization of Korean surnames and names, bowing toward the Emperor's Palace and Emperor worship under the guise of the oneness of Japan and Korea. They also made the use of the Japanese language compulsory as 'mother tongue'. In order to obliterate the cultural traditions of Korea, they distorted five thousand years of Korean history. Valuable cultural goods, relics and heritage were destroyed and plundered at random.

1.11 Japan took a number of measures to exploit the material and human resources for the benefit of Japan and for its eventual war effort, particularly under the State General Mobilization Act of 1938. Japan forcibly drafted over six million Korean youth and adults as laborers, soldiers, and civilian employees of the military. A lot of them were subjected to slavery and forced labor, and even to death as canon fodder for the Japanese army. Innumerable Korean revolutionaries, patriots and innocent people were subjected to unlawful

3 Treaty regarding the Annexation of Korea to the Empire of Japan, 29 August 1910.

confinement, torture, arbitrary killings, summary execution and other inhuman treatment. This system of forcible conscription provided the background for the enlistment of the Korean women as 'comfort women'.

Japan's Exploitation and Plunder of the Korean People

1.12 The economic plunder of Korea by the Japanese Imperialism in agricultural areas was facilitated by the fact that Korea was a backward feudal state which relied heavily on agriculture.

1.13 Under such policies as the Land Investigation Ordinance, the Increased Rice Production Plan and the Rice Delivery Ordinance, Japan deprived most peasants of land ownership, subjecting them to tenant status in harsh conditions. As Japan exported most Korea' rice production into Japan, and made Korea a food base for Japan, the food situation in Korea was gravely aggravated. The enforcement of severe economic measures resulted in a large number of peasants being robbed of their land and food. They were compelled to leave their homes and wander to hunt for jobs or to be employed by Japanese or Korean landlords.

1.14 The Japanese imperialism also plundered not only the peasants but also the entire population as the Sino-Japanese war became protracted and the Pacific War became imminent. The Japanese imperialists paid the Korean laborers low wages, as little as one half or one third of the wages paid to Japanese laborers, and requisitioned more than half of what little income they received through taxation of all kinds.

1.15 In the preparation for the Pacific War, the Japanese imperialists strengthened the 'delivery system' and plundered rice and other agricultural products, iron, coal, timber and marine resources and other goods. They even robbed the population of trinkets and utensils, taking whatever was available for the war. The Japanese imperialists stripped the mountains and fields of Korea naked by producing 3 million tons of pine oil each year beginning in 1942 when the Pacific War intensified.

Situation of Korean Women in the Last Days of the Japanese Domination

1.16 The situation of Korean women under the Japanese domination may be considered in three aspects, family, education and labor in consideration of the political and economic circumstances of the Korean society at that time. There was

no voting right to Korean nor general participation in politics in Korea under the Japanese domination. This had crucial importance to women and they could not have the history of movements for political rights of women as in Japan. In a situation deprived of sovereignty, women participated mainly in nationalist and socialist movements for the restoration of sovereignty of Korean people. For example, women participated actively in the March 1st Movement and later formed such organizations for women movement as the Friends of Labor Society. In the 1930-1940s, however, the Japanese imperialists suppressed thoroughly any national liberation movement and the 'voice' of Korean was suffocated. The space for social movements for Korean women to cry out for sovereignty as Korean and as women were thereby crushed.

1.17 The Great Depression since 1929 severely affected the Korean economy. This economic depression together with the Japanese imperialist wars such as aggression into China and the Pacific War, made the Korean economy as the 'military supply base' for the prosecution of war extremely depleted. In particular, the plunge of the rice price in an agriculture centering on rice as a single crop drove the rural economy to bitter impoverishment. The exploitation of grains for war efforts put the Korean as a whole in a famine condition.

1.18 This economic condition means a lot to women. In case of rural women, the degree of labor went higher to help out the living. The saying at that time, Rural women is worth more than a cow, stronger than a cow, speaks itself. Women took care of farming and all household work, worrying all the time each meal of the family. Women had to eat mugwort, potato, millet, bean cake and so on; when even these were not available, they had to pill out grasses, leaves, and tree barks and feed their families. In this situation, unmarried female members were the first ones who had to leave for jobs in order to help the family living and to reduce the number of the family. This was even more so under the patriarchal family institution that located women as less important family members.

1.19 During the Japanese domination, Japan strengthened the system of state control over families through the linkage of the pre-existing patriarchal institution with the family head system and the family registration system introduced by Japan. The legal status of women as mere 'auxilliary' members of the family was firmly established. Further, women, legally incompetent, needed patron in all legal actions. In a situation where the movement for political participation was not possible unlike Japanese women, this family institution bound Korean women to

family and located them in a socially low status.

1.20 The education of Korean women in this period was in stagnation. In 1919, the entrance rate of Korean women to elementary school was not more than 0.7 % (in case of men, 5.3 %). In 1930, the women entrance rate rose to 5.7 %, but still at a low level. In particular, the opportunity for higher education was very limited: in 1931, the number of female students enrolled in the women's middle school did not exceed 5,000. Even 'new women' received higher education could not get the job opportunity due to the political and economic situation of the Korean society. Under the colonialist and militarist rule blocked of ways of active social participation, these women, too, were engrossed in marriage and family.

1.21 Employment opportunities for women were extremely limited in the economic situation under the depression and the forcible occupation. The Japanese Empire implanted in Korea labor-intensive industries centered on light industries where the role of female workers was significant. For example, the rate of women workers in the textile industry in 1934 was 80-90 % of the entire labor force. Among them, there were many 12-15 year-old young female workers. In the case of Korean women workers, the average wage for the 14 to 15 hours of lengthy labor per day amounted to a quarter of that of the average Japanese male and half of the average Japanese female.

1.22 Under the extreme economic poverty facing Korean women and the debasement of women at that time, the recruitment of 'comfort women' through deception and violence was made possible and the systematic recruitment of 'comfort women' was only possible within the context of political and military rule and the information control of the Korean society.

Wars of Aggression and Japanese Military Comfort Stations: Geographical Location

1.23 Following the Sino-Japanese War since 1937, Japan expanded its aggressive war to vast areas, spanning the Aleutian Islands to the north, the Solomon Islands of the Pacific to the east, New Guinea and other islands of the Mid-South Pacific to the south, and to Burma, the Andaman and Nicobar Islands of the Indian Ocean to the west. Wherever Japanese forces were stationed, comfort stations were set up, as is documented by the Allied and Japanese forces. Comfort stations were also established in Japan proper and in the territories such as forcibly occupied Chosun (Korea),⁴⁾ Taiwan and Northeast China that had fallen into the Japanese

sphere of influence before the Sino-Japanese War.⁵⁾

1.24 Korean women were regarded as a stable supply source of mobilization for the Japanese military comfort stations. While there were comfort stations throughout all the areas affected by Japanese imperialist wars, Korean 'comfort women' were taken even to the foremost front of battle. This meant that they were sexually exploited even in places where their very survival was under threat.

The accused

2.1 Hirohito (1901 - 1989) was Emperor of Japan from 1926 until 1989.

2.2 Tojo Hideki (1884 - 1948) was Chief of Staff of the Kanto (or Guangdong) Army in 1937, Vice Minister of Army in 1938, Minister of War from July 1940, Prime Minister and, at the same time, Ministers of Army and of Interior Affairs from October 1941 to July 1944.⁶⁾

2.3 OKAMURA YASUJI (1884 - 1966) was Vice Chief of Staff to the Shanghai Expeditionary Force in 1932, Commander of the 11th Army of the Central China Area Army from June 1938 to March 1940, and Commander of the China Expeditionary Force from November 1944 till the end of war.

2.4 Minami Jiro (1874 - 1955) was Commander of the Chosen (Korean) Army in August 1929, Minister of Army in April 1931, Commander of the Kanto Army in December 1934, and Governor-General of Korea (August 1936 - May 1942).⁷⁾

2.5 Itagaki Seishiro (1885 - 1948) was Chief of Staff of the Kanto Army in March 1936, Minister of Army (June 1938 - August 1939), Chief of Staff of the China Expeditionary Force (September 1939 - July 1941), Commander of the Chosen Army (July 1941 - April 1945), and Commander of the 17th Area Army (April 1945 - April 1945, and simultaneously the Commander of the Chosen Army).⁸⁾

4 For details of the comfort station in Banjin, see the Appendix.

5 See Map of the distribution of comfort stations where Korean 'comfort women' were forced to serve.

6 He was convicted of waging the war against China and the Western Powers, but not of war crimes, on evidentiary grounds, before the International Military Tribunal for the Far East. He was sentenced to imprisonment for life. Judgment, pp. 463-466.

7 The International Military Tribunal for the Far East found him guilty of the conquest of Manchuria and the war against China. Judgment, pp. 454-6. His actions as Governor-General of Korea in other respects were not put on trial. He was sentenced to imprisonment for life.

8 The International Military Tribunal for the Far East found him guilty especially of war crimes against prisoners of war and civilian internees in the area under his command of the 7th Area Army covering Java, Sumatra, Malay, the Andaman and Nicobar Islands, and Borneo. The Tribunal held that If ITAGAKI, being responsible for supplies to many thousands of prisoners and internees, found

2.6 Umezu Yoshijiro (1882 - 1949) was Vice-Minister of War from March 1936 to May 1938, Commander of the 1st Army from May 1938, Commander of the Kanto Army (September 1939 - July 1944) and Chief of the Army General Staff from July 1944 until the Surrender.⁹⁾

2.7 ANDO RIKICHI (1884 - 1946) was Commander of the 5 Division from May until November 1938, Commander of the 21st Army (November 1938 - February 1940), Commander of the South China Area Army (February 1940 - October 1940), Commander of the Taiwanese Army (November 1941 - March 1944), Commander of the 10th Area Army from March 1944, and also Governor-General of Taiwan from December 1944 till the end of the war.

2.8 Matsuyama YUzo (1889-1947) was Commander of the Infantry Group of the 27 Division in 1939 and Commander of the 56 Division of the Burma Area Army from December 1942 till the defeat of the war.

Superior Authority

3.1 From December 1926 until January 1989, HIROHITO was the Emperor of Japan.¹⁰⁾ From 1926 until 1945, he was the Head of the State, the sole and supreme sovereign who held all the powers of State including legislative, administrative, and judicial matters under the Constitution of the Empire of Japan.

3.2 HIROHITO was also the Commander-in-Chief of the Japanese Imperial Army and the Navy. His power of command covered matters relating to defense and operation planning, the use of the armed forces in both peace and war, and training, disciplinary punishment and internal organization of the armed forces and soldiers. He held the power of command over dispatched military units and entrusted the Chief of the General Staff with the charge of operation-related matters. On the Emperor's orders, each dispatched army unit moved to the assigned area, and engaged in military operations.

3.3 Comfort stations were part of the Japanese military establishment: they were designated as war supply facilities in the Japanese military structure.

himself unable to maintain them for the future, his duty under the Laws of War was to distribute such supplies as he had and meantime to inform his superiors that arrangements must be made, if necessary with the Allies, for the support of the prisoners and internees in the future. By the policy which he adopted he is responsible for the deaths or sufferings of thousands of people whose adequate maintenance was his duty. Judgment, p. 450. He was sentenced to death by hanging.

⁹ The International Military Tribunal for the Far East found him guilty especially on war crimes against prisoners of war and civilian internees in the war theaters. He was sentenced to death by hanging. Judgment, pp. 461-463, 466.

¹⁰ See the Japanese Indictment. See also the testimonies of expert witnesses.

HIROHITO had overall authority over the establishment and maintenance of comfort stations run by the Japanese Imperial Army.

3.4 TOJO HIDEKI was Prime Minister and, at the same time, the Minister of Army and of Interior Affairs from October 1941 to July 1944. In his official capacity, he was responsible for matters relating to military administration. He was responsible for the establishment and maintenance of comfort stations run by the Japanese Imperial Army.

3.5 From August 1936 until May 1942, MINAMI JIRO was Governor-General of Korea. The power of the Governor-General to rule Korea was in principle delegated by the Emperor. Within the ambit of delegation, the Governor-General had command and control over the Army and the Navy and was responsible for all other political affairs. The Governor-General had full power over the legislative, the administration and the judiciary answering only to Emperor HIROHITO. The Governor-General was exceptionally excluded from the supervision and control of the Minister of Colonial Affairs.

3.6 Itagaki Seishiro was Commander of the Chosen Army from July 1941 until April 1945. The Chosen Army was directly responsible to Hirohito. The Commander of the Chosen Army held command over the Chief of the Chosen military police upon instructions from the Chief of the General Staff in matters of military command and from the Army Minister in matters of military administration.

3.7 Itagaki Seishiro, OKAMURA YASUJI, Umezu Yoshijiro, ANDO RIKICHI, and Matsuyama YUzo in their respective positions as commanders of the Japanese armed forces, had the authority and responsibility to control the troops under their command. As commanders of various armed forces, they exercised powers and duties consistent with their superior position. They were responsible for the establishment and maintenance of comfort stations found in army barracks and in areas under their respective command and control.

General Allegations

4.1 At all times relevant to the present indictment, the entire territory of Korea was under military occupation by Japan. The state of war between Korea and Japan existed since 1904.

4.2 During the Russo-Japanese War (1904-1905), the territories of Korea became a region of war. The Japanese military sent troops to Korea and forcibly occupied

the Korean territory. The Korean people did not accept the Japanese forcible occupation without resistance and reacted with strong armed struggles against Japan. There had been various forms of struggles including volunteer army struggles, activities of independence armies, demonstrations against Japan on March 1, 1919 and on June 10, 1926. In particular, the organized anti-Japanese armed struggle of the Korean people, which was conducted from the beginning of the early 1930s in wide regions in and out of Korea, dealt a severe political and military blow to the Japanese and brought earlier the defeat of Japan.

4.3 The Japanese military government of Korea underwent a few changes in form and nature throughout its duration. The initial stage was the stationing of the Japanese army in Korea and the imposition of martial law over part of the Korean territory. The Japanese rule changed its form from the Resident-General to the Government-General that lasted till 1945. Although there is an argument that Korea became part of Japan, the nature of the Japanese domination over Korea during the period in question was none other than military occupation within the meaning of international law.

4.4 All acts or omissions set forth as war crimes recognized by Article 2, paragraph 1 of the Charter of the Tribunal occurred during belligerent occupation of Korea by Japan. It should be noted that war crimes recognized in the Tokyo Charter were accepted by Japan in concluding the Peace Treaty in 1951.

4.5 All Korean 'comfort women', victims of the Japanese military sexual slavery, referred to in this indictment were at all relevant times inhabitants of Korea occupied by Japan.

4.6 The accused in this indictment were required to abide by the laws and customs of war including the 1907 Hague Convention No. IV.

4.7 Unless otherwise indicated below, all acts and omissions set forth in this indictment took place between 1937 and 1945.¹¹⁾

4.8 Alternatively, the accused in this indictment are also charged with crimes against humanity pursuant to Article 2, paragraph 1 of the Charter of the Tribunal.

4.9 The alleged acts or omissions as constituting crimes against humanity were part of a widespread, large-scale or systematic attack against a civilian population, specifically the population in Korea.

¹¹ It has been argued that a form of comfort stations run by civilians was in existence at the time of the Sino-Japanese War in 1894 and that the army had already set up comfort stations as early as the Russo-Japanese War in 1904. There was also evidence of comfort stations during the so-called Shanghai Incident of 1932.

4.10 Hirohito is individually responsible for war crimes and crimes against humanity and as recognized in Article 2, paragraph 1 of the Charter of the Tribunal relating to the Japanese military sexual slavery. Individual criminal responsibility includes planning, instigating, ordering, committing, aiding, abetting or otherwise participating in the planning, preparation or execution of any acts or omissions set forth below. Tojo Hideki, Minami Jiro, Itagaki Seishiro, OKAMURA YASUJI, Umezu Yoshijiro, ANDO RIKICHI and Matsuyama YUzo are likewise individually responsible.

4.11 Hirohito is also, or alternatively, criminally responsible as a superior for the acts of his subordinates as recognized in Article 3, paragraph 2 of the Charter of the Tribunal. Command criminal responsibility is the responsibility of a superior officer for the acts of his subordinates if the superior knew or had reason to know that his subordinates were about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent such further acts or to punish the subordinates. Tojo Hideki, Minami Jiro, Itagaki Seishiro, OKAMURA YASUJI, Umezu Yoshijiro, ANDO RIKICHI, and Matsuyama YUzo are likewise responsible.

Counts

Planning and Implementation of the Japanese Military 'Comfort Station' Policy (Counts 1-2)

5.1 HIROHITO, in his status as the Head of State, stood at the apex of the Japanese military comfort stations policy which was implemented by the Chief of Staff and the Minister of the Army, and then with Commanders of the Korean Army, the Taiwanese Army, the Kanto Army, the China Expeditionary Force, the South Sea Area Army and the Burma Area Army.

5.2 Hirohito signed and fixed the royal seal, with the signature of TOJO HIDEKI in his capacity as Prime Minister and Minister of Army, on 30 March 1942 to Edict No. 300 which amended the Government Organization of the Ministry of Army to include comfort station matters within the competence of the Reward and Merit Division under the heading 'other welfare'.¹²⁾

5.3 Hirohito is responsible for his omission to prevent the relevant organs of

¹² Article 9, item v, [Japanese] Official Gazette No. 4565 (31 March 1942). See also Memoir of Inoue Masanori who served the Division; recited in Hata Ikuhiko, *Ianfu to Senjo no Sei (Comfort Women and Sex in War Field)*, 1999, p. 105. For other grounds, see the Chinese and Japanese Indictments.

the Japanese government from participating in the planning and execution of the comfort station system, if not his acts of direct participation.

5.4 Tojo Hideki, as Prime Minister and, at the same time, Minister of Army from 1940 to 1944, participated in the planning and implementation of the Japanese military 'comfort station' policy with other unnamed organs of the Japanese Government including the Ministry of Foreign Affairs.¹³⁾

5.5 Ando Rikichi, commanding the Taiwanese Army, sent a telegram direct to Tojo Hideki as Minister of Army in which he requested the transfer of 'comfort women' to the South Pacific Area.¹⁴⁾ TOJO answered affirmatively to the request.¹⁵⁾

5.6 Tojo Hideki is responsible as Prime Minister for his acts or omissions in connection with the acts of various branches of the Ministry of Foreign Affairs, which controlled the consulates and Japanese nationals abroad in maintaining comfort stations. For instance, the Government-General of Taiwan sought the instruction from the Ministry of Foreign Affairs on the method to deal with passengers for the purpose of setting up comfort stations pursuant to the military request in a document titled 'Matter regarding the establishment of comfort stations in the occupied territories of the South Pacific Area' dated 10 January 1942. The Ministry of Foreign Affairs, then headed by Togo Shigenori, instructed that these passengers should travel with the certificate issued by the army (as the issuance of passports was not considered appropriate) in a document of 14 January, titled 'Matter regarding the method of transportation of comfort women in the occupied territories of the South Pacific Area'.¹⁶⁾

13 Although the origins of 'comfort stations' may date back to the Sino-Japanese War of 1894 and the Russo-Japanese War of 1904, the present indictment focuses on those set up since 1937 after the Sino-Japanese War. As in other paragraphs charging war crimes and crimes against humanity, it is not possible to give the full detail of these crimes due to the fact that the Japanese government still refuses to open its wartime archives to the public. Further, the Japanese government and other individuals destroyed the relevant evidence immediately after the war as will be alleged below.

14 Commander of the Taiwanese Army, Matter regarding Travelers to the South Pacific Area (12 March 1942).

15 Associate Officer to the Ministry of Army, Matter regarding Travelers to the South Pacific Area (16 March 1942). For his crimes as Governor-General of Taiwan, see the Taiwanese Indictment.

16 See also the part of the Japanese Indictment on the establishment of comfort stations in Borneo, Indonesia. TOJO HIDEKI was found not guilty of war crimes before the International Military Tribunal for the Far East. The Tribunal stated: Upon his resignation in [September] 1942 TOGO appears to have endeavored to see to the observance of the Rules of War. He passed on such protests as came to him for investigation and in several instances remedial measures were taken. At the time of his resignation atrocities committed by the Japanese troops had not become so notorious as to permit knowledge to be imputed to him (Judgement, p. 461). Nevertheless, even if acknowledging his diligence on the observance of the law of war, the document indicates that he did not take any step to prevent or investigate atrocities against 'comfort women'. The Tribunal

5.7 There are other instances in which a consulate gave the Minister of Foreign Affairs a report on the immigration of women, or where the consulate investigated and reported the occupations of Japanese, Korean or Taiwanese, particularly managers of comfort stations and the situation of 'comfort women', or comfort stations related matters.¹⁷⁾ Further, the Director of the Third Division at the Bureau of America in the Minister of Foreign Affairs received notice from the Head of the External Affairs Department in the Japanese Government-General of Taiwan in September 1940.¹⁸⁾ It stated that all travelers needed to obtain a certificate showing the reasons for travel to China, and sought the understanding that the urgency of the travel of comfort station workers make permission granted.

5.8 Tojo Hideki is also responsible as Prime Minister for his acts or omissions in connection with the acts of the Ministry of Army concerning comfort stations. The Ministry assigned the transportation of 'comfort women' and management of comfort stations to the Reward and Merit Division of the Personnel Bureau from April 1942. In a circular of 26 March 1942, for instance, director of the said division, Kuramoto Keijiro, stated his wish to set up permanent comfort facilities for soldiers below the rank of non-commissioned officers with a defense donation from the Japanese nationals. Six months later, it was circulated on 3 September that these facilities were established at 100 places in North China, 140 in Central China, 40 in South China, 100 in South Area, 10 in South Sea, 10 in Sakhalin, 400 in total.¹⁹⁾ The Minister of Army routinely attended to the meetings of directors.

5.9 This system of military comfort stations was a form of sexual slavery.

5.10 Hirohito, Tojo Hideki and Ando Rikichi were in a position to have a clear knowledge of the acts committed in the comfort stations against Korean women.²⁰⁾

By their participation in these acts, Hirohito, Tojo Hideki and Ando Rikichi

would have made a different finding if any evidence relating to comfort stations had been submitted to it.

17 For example, see Matter regarding Control of travel to China [Taipai Provincial Governor] (13 Jan. 1939); Matter regarding various statistical report on the temporary arrangement for nationals to travel to China (11 June 1941).

18 Governor of Takao Province, Matter regarding Treatment of Travelers to the Chinese Coastal Area Considered as Impossible to Obtain Certificates of Reasons for the Travel to China and other Documents (23 August 1940).

19 Kinbara Setsuzo, Rikugunsho Gyomu Nissi Tekiroku (Summary of the Work Journal of the Ministry of Army).

20 In the diary of Hirohito's brother, Takamatsunomia, who was also a member of the Emperor's family and hold a high position in the military, 'comfort women' were mentioned. See the Japanese Indictment.

committed:

Count 1:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (sexual slavery).

Count 2:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (enslavement).

Forced Recruitment of Korean 'Comfort Women' (Counts 3-4)

5.11 Since the establishment of comfort stations, a huge number of Korean women were forcibly recruited as an essential part of the Japanese comfort stations policy by lower ranking officials of the Japanese authorities and civilian managers in cooperation with the former.²¹⁾

5.12 Kim Gunja (1926 -) is one of the Korean victims of the Japanese military sexual slavery. In March 1942 at the age of 16, she followed a Korean man with military uniform of no rank mark, who sent her to a comfort station named 'Kingaku' at Huichun in North China. At that time, she thought that she was on an errand for her stepfather Choi Chulji, a policeman in Chulwon, Gangwon Province.²²⁾

5.13 The case of Pak Yongsim (1921 -) is another example of forcible recruitment in collaboration with the local police. In March 1938, this 16 year-old victim was approached by a Japanese policeman who told her that there was a vacancy at a factory. He sent her from Pyongyang to a comfort station in Nanjing.²³⁾

5.14 Choe Pong Son was born in 1925. She was 14 years old when she worked as a nanny for a wealthy family in Pukjin, Unsan County, North Pyongan Province. One day, a Japanese policeman and a military police came and told her that they would take her to a nice place where she could eat well. She said she would not go, but they seized and dragged her to a remote house 5

21 The concept of 'forcible recruitment' should not be confined to cases where physical force was used in the recruitment. It also covers a situation where a woman was recruited and unable to return contrary to her will and wishes.

22 See the Selective Testimonies in the Appendices below.

23 Ibid. See also para. 5.51 below. See also an article by Walter Rundle, United Press war correspondent, in China Burma India Roundup, 30 November 1944, filed before the Tribunal.

kilometers from the village. There were already 17 girls in the house. They were then put on a train and got off at a station two stops before Siping. They then reached a building with a sign that read 'Meigetsukan'.

5.15 The Japanese police has also frequently resorted to more violent methods. The Japanese policeman arrested Cho Sunduk (1921 ~ 1999) in the train from Seoul to Hamhung. He interrogated her at the police station in Wonsan. He suggested her to work in a certain unit ('Eseidai' or 'Hesedai') where she could earn money. She insisted to go home, but the police dragged her away with other 3 girls.²⁴⁾ When Yun Duri (1928 -) was 16 years old in 1943, a policeman belonging to the Southern Police Station who found her near the railway station at Pusan-jin, Korea, forcibly placed her into the custody of a soldier who sent her to Japan.²⁵⁾

5.16 There are also cases in which local administrative authorities in cooperation with the military and the police were involved in the recruitment process. Kim Bokdong (1926 -) testifies that she was told to serve for 3 years at a factory making military uniforms as 'Taishintai' by the leader of a task force and head of the village who came with a Japanese soldier wearing a uniform with rank insignia. It was 1941 and she was 15 years old. She was sent to Guangdong, China, at first, then moved around Asia as will be seen below.²⁶⁾ There are other cases where even girls as young as 11 were similarly victimized.²⁷⁾

5.17 Kim Tok Sun was born in 1921. When she was 16 years old, she was cajoled by the honeyed words of her village head who told her they would get her a job that would provide her with good food and fine clothing. She arrived in Junju to find 10 other girls of about her age already there. The village headman handed them over to a Japanese. They were then taken to Pusan and arrived at Hiraru, near the border between China and Mongolia, via Nigata and a port of China by boat.

5.18 The recruiters made use of all kinds of fraudulent methods such as misrepresentation and deceit of jobs and destination to entice Korean women into sexual slavery. In 1941, Son Pan-im, born in Hadong, South Kyung-sang Province in 1924, was deceived to follow 'Satomi', a Japanese woman in her forties, who said she could send her to a good office. She took a ship with 40 other girls in

24 See the Selective Testimonies in the Appendices below.

25 See Annex II.2 below.

26 See the Selective Testimonies in the Appendices below.

27 See the Table in Annex I.2 below.

Pusan.²⁸) She was dragged along to various comfort stations in the Pacific from Rabaul, New Guinea, Borneo, to the Philippines. Kim Taesun (pseudonym), born in Gangjin, South Cholla Province in 1926, was told by her father to hide as there were cases of abduction of unmarried women in September 1944. One day, after hiding for about a week, she had lunch with her family. Then she was taken away by a Korean and a Japanese who told them to make her earn money. Passing through Inchon, she heard the leader say that they would go to a factory in Japan. She arrived at Osaka and was put on the 'Arabiramaru' to Saigon, then to Burma where she began the life of a 'comfort woman' in Rangoon.²⁹)

5.19 Jang Su Wol (1924-1996) was working at the West Pyongyang Geta (Japanese sandals) Factory when a Japanese foreman came to her and said that there was a good job and that, if she took it, she would get three times her present monthly salary. According to her memory, it was around September, 1941. Thinking of her poor family, she followed the foreman to Pyongyang station where she was dragged to Qugihar, China, together with 7 other girls being guarded by Japanese policemen.

5.20 Ha Sangsuk, born in 1928, was taken away by two Korean man in 1944. She believed that she would work in an entertainment group for the army. She was forced to become a 'comfort woman' at Jiqingli, Hankou in China.³⁰) She was given the Japanese name 'Kimiko' (or Gunja). The offer of nursing work was another pretext frequently used to recruit women in a deceptive manner.³¹)

5.21 Jong Song Myong was born in 1924. In August, 1943, a Japanese named Maeda told her If you join the voluntary corps and work for 6 months, you can make a lot of money. She followed him to Wonsan and then to Pusan, where she was handed over to a Japanese. She finally arrived at Mekutera comfort house, some kilometers away from Rangoon, via Taiwan and Singapore together with 40 other girls and women. There she was forced into sexual slavery.

5.22 Kidnapping and other types of violence were also widely resorted to. When Shim Dalyeon (1927 -), at that time 12 or 13 years old, and her older sister was taking vegetables in the field, two men got out of a truck and forced

28 In the Philippines after the surrender of the Japanese troops, she was forced to pretend a nurse at the army field hospital where a US officer visited probably for inspection. See The Korean Council for the Women Drafted for Military Sexual Slavery by Japan & The Korean 'Comfort Women' Research Institute, *Gangjero kkullokan kunwianbudul (The Korean 'Comfort Women' Forcibly Taken Away)*, vol. II (Seoul: Hanul, 1997)(in Korean) pp. 69 - 80.

29 Ibid., vol. I (1993), pp. 229 - 237.

30 See the Selective Testimonies in the Appendix below. See also para. below.

31 See the testimonies of Annex II.2 below.

them into it. In the car, she found other girls taken when going home after school. When they cried desperately, they were beaten and kicked.³²)

5.23 The procurement of women with the consent of their family, often extracted under duress, was merely a pretext to conceal and justify the forced character of recruitment.³³)

5.24 The forcible recruitment of 'comfort women' was frequently accompanied by other sexual violence such as rape and gang rape as well as torture, mutilation and other assault perpetrated by the recruiters and Japanese soldiers.

5.25 Kang Dukkyung (1929 - 1997) was 15 years old when the school teacher pressed her to join the Women's Volunteer Labor Corps. She was sent to a Fujikosi airplane company at Toyama Prefecture in Japan. She escaped but was arrested not far away by a soldier. Then she was forcibly taken into a truck where she found herself alone with the military policeman and the driver. The former stopped the truck and took her to a hill in a dark night. He raped her.³⁴)

5.26 Kim Yong Suk was born in 1924 in Unpha county, North Hwanghae Province. One day, when she was working as a nurse at the provincial hospital in Sariwon, a Japanese named Sano Shuji came to her and said that Before long, the girl drafting will begin. If you are taken, you can not escape death. But if you come with me, you would be free and earn a large sum of money. I accepted it as it is and followed him to Japan in accompany with other 20 girls. We went to Japan by liner. Sano Shuji raped us one by one on the way to Japan.

5.27 As can be seen from the above cases, the methods used to recruit 'comfort women' involved acts in violation of international law and Japanese municipal law which were extended to apply in Korea at that time. In short, the process of recruiting 'comfort women' was no different from 'slave hunting'.

5.28 In all the cases stated above, the names of those who were directly involved in the forcible recruitment could not be identified. Japanese wartime documents show that these recruiters, themselves civilian operators of comfort stations, were usually dispatched by the local military forces in pursuance of their need.³⁵) They were either handpicked by the Japanese military or selected by the relevant military headquarters of mobilized areas upon request from each expeditionary force.

32 Ibid.

33 Ibid.

34 Ibid.

35 Yoshimi Yoshiaki, *Kyodo Kenkyu Nohogun Ianfu (Joint Research on Japanese Military Comfort Women)*, Otsuki Co. (1995).

5.29 The forcible recruitment of 'comfort women' on such a widespread scale for a lengthy period of time over 10 years could not have been possible without the involvement or condoning of the Japanese authorities, whether military, police or administrative agencies, in the traffic in women and children. This can be proved by the fact that these recruiters had to carry a license issued by the military or overseas diplomatic services and go to places with which they were familiar or had connections. They had resort to normal administrative channels at the designated town for mobilization, and/or to the most effective organ with the power to enforce: the local or the military police. Otherwise, they made use of the employment agency network commonly found in large cities that were more like human trafficking organizations. As will be shown in later paragraphs, the certificate issued by the police for passage could not be obtained without the assistance of the police that had a vast surveillance and intelligence capability.

5.30 The Japanese military and administration exercised enormous influence over Korea and its people, and the mobilization of the Korean 'comfort women' was almost impossible without the understanding and direct involvement of the Korean Government-General. The Korean Governor-General who was appointed by the Emperor also had vast powers to carry out various government affairs, while its Bureau of Police was in charge of police affairs, and in the local areas, the provincial governors commanded the police stations in each district through the provincial police department. The administrative and the military and civilian police apparatus under the Japanese Government-General of Korea and the Commander-in-Chief of the Korean Army were systematically utilized for the recruitment of Korean 'comfort women.' Minami Jiro was Governor-General from 1936 to 1942. Other relevant governor-generals were Koiso Kuniaki (from 1942 to 1944)³⁶ and Abe Nobuyuki (from 1944 to 1945).³⁷

5.31 Those commanders of the Japanese Imperial Army who planned, instigated, ordered, aided, abetted or otherwise participated in the acts of forcible recruitment

36 He (1880 - 1950) was Chief of Staff of the Kanto Army (August 1932 - March 1934), Commander of the Chosen Army (December 1935 - July 1938), Minister of Colonial Affairs (1939 - 1940), Governor-General of Korea (1942 - 1944), and Prime Minister (July 1944 - April 1945). On war crimes against prisoners of war and civilian internees, in particular, he was found guilty by the International Military Tribunal for the Far East. The Tribunal stated that When KOISO became Prime Minister in 1944 atrocities and other war crimes being committed by the Japanese troops in every theatre of war had become so notorious that it is improbable that a man in KOISO's position would not have been well-informed either by reason of their notoriety or from interdepartmental communications. Judgment, p. 453. He received the sentence of imprisonment for life.

37 He (1875 - 1953) was Prime Minister (August 1939 - January 1940) and Governor-General of Korea (1944 - 1945).

of 'comfort women' in Korea, should be held responsible.

5.32 In addition, the Japanese Imperial Army frequently commissioned the Japanese military government of Korea and the headquarters of the Korean Army to recruit Korean women and girls for comfort stations. This may be exemplified by the recruitment for the Kanto Army in special intensive training session in 1941 when the Japanese Imperial Army stationed in Kwantung requested the Korean Government-General to round up 20,000 Korean 'comfort women'. Hara Zenshiro, staff officer of the Kanto Army at the time, stated that the office of general staff made the request to the Korean Government-General in pursuance of the mobilization plan of the Kanto Army.³⁸ The Korean Government-General sent thousands of Korean women to the northeast China. Umezu Yoshijiro was Commander-in-Chief of the Kanto Army from September, 1939 until July, 1944, and was succeeded by Yamada Otozo.

5.33 The Korean Government-General was involved in the finance for the expenses needed for sending 'comfort women' to the military.³⁹

5.34 Both the Japanese Imperial Army and the Navy built comfort stations through their respective chain of command with Hirohito at the apex.

5.35 When the Japanese military occupied Burma in 1942 under Terauchi Hisaichi,⁴⁰ Commander-in-Chief of the South Area Army from November 1941 until the end of the war, agencies from Japan flocked together to Korea to recruit Korean women for 'comfort services' in the occupied territories of South-East Asia in 1942. The Headquarters of the Korean Army explicitly requested civilian operators to recruit 'comfort women' and fully supported them. In response to this notification, Kitamura Eibun and Kitamura Tomiko, among others, applied for and obtained permission from the Headquarters of the Korean Army. They procured 22 Korean women aged between 17 to 29 at a price of 300 to 1,000 won. The Headquarters of the Korean Army gave them a letter which demanded all Japanese troops provide every necessary assistance such as transportation, food and clothing.⁴¹

38 See also the Japanese Indictment, pp. 2-4; the Chinese Indictment.

39 S-11414, S-12382, and S-14807 (emergency coded telegram between Kalgan, Inner Mongolia and the Bureau of Financial Affairs, the Korean Government-General sent on 4 June, 13 June, 6 August 1944), found in US National Archives, RG 457, Records of the National Security Agency Entry 9011 Japanese-German Diplomatic Messages Box 153 and RG 457 Historic Cryptographic Collection, Pre WW I through WW II Box 900.

40 He (1879 - 1946) was Commander of the Taiwanese Army in August 1934, Minister of Army in March 1936, Commander of the North China Area Army, Commander of the China Expeditionary Force (March 1941 - November 1944), and Commander of the South Sea Area Army from November 1941 till the end of the war. See also the Indonesian and the Philippine Indictments.

5.36 Itagaki Seishiro had been the Commander-in-Chief of the Korean Army from July 1941 to 1944.

5.37 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro and ANDO RIKICHI who had a knowledge and understanding of the nature of the acts committed against 'comfort women', were responsible through their acts or omissions for the crimes committed in the recruitment of Korean 'comfort women'.

By their participation in these acts, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro and ANDO RIKICHI committed:

Count 3:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (compelling service in hostile forces, unlawful confinement, taking hostages, rape, torture, inhumane treatment, attacking civilians, using, conscripting or enlisting children).

Count 4:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (enslavement, rape, torture, persecution).

Forcible Transfer of Korean 'Comfort Women' to Japanese Military Comfort Stations (Counts 5-6)

5.38 After their forcible recruitment, Korean women and girls were forcibly and systematically transferred from their homes, in most cases, to foreign territories where they were placed in Japanese military comfort stations throughout the Asia-Pacific region.

5.39 When Kim Gunja got into a truck after taken by a recruiter, she found 7 women with a Korean man aged about 40 wearing an army uniform. According to her, the truck drove for about a full day and night where an army truck was waiting for them. She was moved into that truck which ran quite a while and stopped at an old inn-like two-story house with a signboard saying 'Gingaku Ianzo' in Huichun, Manchuria. The area was under the control of the 71 Division,

41 United States Office of War Information, Psychological Warfare Team, Attached to U.S. Army Forces India-Burma Theater, Japanese Prisoner of War Information Report No. 49 (1 Oct. 1944). For the case of the Ogasawara Islands, see Annex I.2.

the Kanto Army.⁴²⁾

5.40 Ro Hyon Hwa was born in 1922. In October, 1940, when she was 18 years old, a landlord living in Jisa-ri, Ryonggang county and a Japanese person came to her house and said to her mother that they could provide her daughter with a good job. When her mother refused, he kicked her in the face, breaking two of her front teeth and took her into a truck. There were more than 20 wagons in the truck and every one of them was crowded with Korean girls. They were locked inside and a rice-ball was handed to them through a small window at mealtime. After 3-4 days, they arrived at Mudanjiang in northeastern China, and were taken again to Japanese barracks, 4 kilometers away.

5.41 Forcible transfer of recruited women took place under the tight control and administration of the Japanese authorities. By request of the Japanese forces in the field or in general, detailed plans for this purpose were carefully drawn up by the Japanese consulates, the Governments-General in Korea and Taiwan, the Ministry of Interior Affairs and the Cabinet.

5.42 These plans for forcible transfer were systematically executed. 'Free' entrance to China without needing passports was no longer the case after the Sino-Japanese War. To travel to China, it was required to obtain certificates of identity or passports from the police, in other words, State authorization.⁴³⁾ A circular to the same effect was issued on 17 September 1937 by the public security division at the Police Bureau of the Korean Government-General under the supervision of Minami Jiro.

5.43 In a memorandum of 10 March 1939 relating to the passage to Hankou, China, the Department of External Affairs in the Government-General of Korea ordered the local police to restrict travel to that destination as the military comfort stations reached their limits.⁴⁴⁾ Travel to areas of military operations and remote places required a travel document from the stationing forces or the military police in the field.⁴⁵⁾

5.44 The Cabinet decision of 7 May 1940 relating to the temporary processing

42 Korean researchers of the Japanese Prosecution Team for the Tribunal who are residents in Japan have been of great help in identifying perpetrators and troops stationed in the area where Korean survivors such as Ha Sangsuk, Kim Bokdong, Kim Gunja, Pak Yongsim, and Song Shindo were forced into sexual slavery.

43 Vice-Minister of Foreign Affairs, Matter regarding the control of travel to China by undesirable elements, 21 August 1937.

44 Public Security Division, the Police Bureau of the Korean Government-General, Matter regarding the regulation of departures for Hankou, 10 March 1939.

45 Vice-Minister of Colonial Affairs [Tanaka Takeo], Matter regarding the situation of the issuance of certificates on the travel in occupied territories of the Japanese army in China, 9 August 1939.

of nationals travelling to China allowed managers of comfort stations in China, *inter alia*, to import 'employed' women in numbers specified in certificates issued by the police officer in charge at the consulate of China.⁴⁶⁾

5.45 The Asia-Pacific War placed the deportation of 'comfort women' to the South under the exclusive control of the Ministry of Army, which assigned the transportation of 'comfort women' and management of comfort stations to the Reward and Merit Division of the Personnel Bureau in April 1942.⁴⁷⁾

5.46 The Kitamura couple and 22 Korean women departed from Pusan for Burma with other 703 Korean women and about 90 Japanese managers on 10 July 1942.

5.47 It was the same day when Mun Okju (1924 -) left Pusan for Burma. Born in Taegu in 1924, she went to Pusan with a friend to work in a restaurant. Two Korean man (named 'Matsumoto') and woman were waiting for them at the railway station. They took us to an inn named 'Gapeul Hotel' where 16 women were already there. On 10 July 1942, 18 women got on board a ship at the Pusan port. The ship was a military one with six or seven others. The ship taking them and with some 300 to 400 women was sailing in the rear. These 18 women were formed into a group and others were the same. When she questioned other girls, they also said that they were going to restaurant to earn money. The ship sailed a month or two and finally arrived at Rangoon.⁴⁸⁾

5.48 The Kitamura group also arrived at Rangoon on 20 August via Taiwan, where the ship took up 22 women for Singapore. In Rangoon, they divided up into groups of 20-30s, each forming a separate comfort station belonging to regiments or army groups in different regions of Burma. The Kitamura were placed at the 114th Regiment. After staying at a few towns for several months, they came to Myitkyina around January 1943. The comfort station run by Kitamura was called 'Kyohei' along with two other comfort stations in the area.⁴⁹⁾

5.49 Mun Okju was likewise sent by truck to Mandalay in mid-Burma. The army renovated one story house into a comfort station, the only one in Mandalay. In the area was the headquarters of the 55 Division whose commander was Takeuchi Hiroshi (from April 1941 to December 1942).⁵⁰⁾ She was given the

46 Matter regarding the temporary measures of Japanese nationals traveling to China, 7 May 1940.

47 See Hata Ikuhiko, *op. cit.*, p. 104.

48 Keith Howard (ed.), *True Stories of the Korean Comfort Women* (Cassell, 1995), pp. 108-109.

49 Allied Translator and Interpreter Section, Supreme Command for the Allied Powers, Research Paper: Amenities in the Japanese Armed Forces, No. 120 (15 Nov. 1945), pp. 17-18.

50 See Morikawa Machiko, *Sensen Burma Sensen Shidan no Ianfu Datta Watashi* (Mun Okju: I was a 'Comfort Women' of the Tate Division in the Burma Front), Nashinokisha (1996).

Japanese name 'Fumihara Yoshiko'.

5.50 The Japanese military classified Korean women and girls in transit as 'war material'. They were subjected to the inhumane treatment and slave-like conditions during deportation. After deceptively recruited, Hong Aejin (1928 -) was put on a military ship to Shanghai. An officer tried to bring her to a small room. She resisted but he tore her cloth to sheer nudity. Threatening with the long sword, he suppressed any resistance in raping her.⁵¹⁾

5.51 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, and ANDO RiKICHI in their status and position in the Japanese government and the military, participated in the forcible transfer of recruited Korean women and girls to comfort stations in various parts of the Asia-Pacific.

By their participation in these acts, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro and ANDO RiKICHI committed:

Count 5:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (unlawful deportation and transfer).

Count 6:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (deportation).

Crimes Committed at the 'Comfort Stations'

1. Rape (Counts 7-8)

5.52 Rape was in most cases the first act committed against Korean 'comfort women' who had not known the real purpose of their recruitment. Most of these women and girls were unmarried with no sexual experience. Started this way, rape was repeatedly and continuously committed for months and years, dozens of time per day in tightly controlled comfort stations. The Japanese military made detailed regulations for comfort stations specifying days, time, payment and other matters for the visit. They strictly implemented these provisions and exercised supervision over comfort stations run by private operators.

51 See Annex II below.

5.53 Two or three days after Kim Gunja arrived at a comfort station in Huichun in 1942, she started to be raped by Japanese soldiers. This comfort station was run by the Korean man who brought her there. At first, she refused and was hit hard on the ear. The eardrum in the right side was torn and bled. The wound was left unattended and she lost her hearing afterwards. She was given the Japanese name 'Kimoko' or called 'Room No. 9'. Today, she never speaks Japanese. Japanese soldiers came even on Sundays from 9 am till 7 pm. They usually came in group either on foot or in trucks led by an officer. Officers came at night. Soldiers waited in rows in front of each room after passing through an office. The house was crowded with soldiers numbering over 100. When there were many soldiers, she had to receive about 40 men and found no time to wash. The operator of this comfort station hit the girls frequently and watched them with other men. She could not think of attempting to escape after seeing an escapee brutally battered.

5.54 On 27 October 1938, OKAMURA YASUJI, Commander of the 11th Army of the Central China Area Army, in collusion with his superior Hata Shunroku,⁵² Commander of the Central China Expeditionary Force and some Staff Officers of the 11th Army, instructed the 11th Army to set up comfort stations in Hankou.⁵³

5.55 Song Shindo, born in 1922, was one of the victims deceptively recruited to a comfort station named 'Sekaikan' (World Club) in Muchang, China at the end of 1938.⁵⁴ After medical checkup, she had to receive Japanese soldiers. She did not know what to do. She kept crying and ran out of her allotted room. Afterwards, she, now called 'Kaneke', was often beaten, starved, and confined in a small space by the runner of the house. She was also threatened with swords, battered and wounded by soldiers. She saw a few 'comfort women' who committed suicide after drinking a cresole bottle in the toilet or strangling themselves. There were many pregnant 'comfort women'. They were not given

52 He (1879 - 1962) was Commander of the Taiwanese Army in August 1936, Commander of the Central China Expeditionary Force from February 1938 to December 1938, Minister of Army (August 1939 - July 1940) and Commander of the China Expeditionary Force (March 1941 - November 1944). The International Military Tribunal for the Far East found him guilty, stating inter alia that Either HATA knew of these things [atrocities committed by the Japanese troops under his command in China] and took no steps to prevent their occurrence, or he was indifferent and made no provision for learning whether orders for the humane treatment of prisoners of war and civilians were obeyed. In either case he was in breach of his duty as charged. Judgment, p. 446. See also the Indictment of China (Mainland).

53 For his role in planing the establishment of comfort stations for the Army in Shanghai in 1932, see the Japanese Indictment.

54 She was deceived by a Japanese woman who promised to find her a lucrative job. See the Selective Testimonies in the Appendix below.

leave and some of them were driven out. When she herself got pregnant, she was forced to provide sex. She miscarried on the seventh month with the baby grape-colored. Soldiers who came to the comfort station were from the 6th and the 9th divisions of the 11th Army. It was under the command of OKAMURA YASUJI.

5.56 In December 1944, Ha Sangsuk, with some forty other girls, arrived at a comfort station in Jeogkyungri, Hankou. The house was run by a Korean couple from Pyongyang, Korea. After three days of rest, they underwent a medical examination by a Japanese army doctor to see if they contracted any venereal diseases in an intimidating atmosphere. He knew she was a virgin, yet he gave an injection with the effect of preventing pregnancy. Then they went to the Janghangkwan, built by Indians in the British Leased Territory where she got the permit from the Military Supply Comfort Section. According to Yamada Seigichi, after examining the photograph, the certificate of house registry, the letter of permission by parent, the status certificate issued by the municipalities of an applicant, a non-commissioned officer wrote an interrogation paper to be transmitted to the Military Police.⁵⁵ At first she had to endure three Japanese soldiers. Later it became 10 to 15 soldiers on a normal day. She had been in that condition till the end of war. The area was under the occupation of the China Expeditionary Force commanded by the same OKAMURA YASUJI.⁵⁶

5.57 Pak Yongsim, while in Nanjing, had to endure 30 to 40 soldiers a day on average. One day when she refused an officer because of so much pain, he battered with fists, and kicked her. Then he drew his sword and put it to neck, saying that he would show the taste of the Imperial Army. While she was soaked with blood, he had intercourse with her against her will.⁵⁷

5.58 Kim Youngsuk (1927 -), deceived into the Japanese military sexual slavery, was taken to Shenyang, China in 1939 at the age of 12. An officer named 'Nakamura' took her to a one-story house and gave her the name 'Odaka'. Situated inside the army barrack, the comfort station was surrounded by walls with barbed wire. It was guarded by a dog and a sentry. On the first night when Nakamura could not manage intercourse, he then used the knife to widen the vagina. She lost consciousness. Although the wound swelled up and got worse, no medical care was given and she was forced to 'serve' soldiers.

5.59 Hwang Son Ok was forced into a lorry and, after two hours, arrived at

55 Bukanheitan (Wuchan Army Supply Depot) (1978).

56 See the Selective Testimonies in the Appendix below.

57 Ibid.

Japanese barracks where she was subjected to sexual slavery. The comfort station was a two-storey building surrounded by barbed wire, which stood a little distance from the barracks. For the first two or three days, we refused the demands of the Japanese soldiers. Then they threatened to kill us with guns and beat us all over, our waists, backs, and legs, and even slapped our hands with leather belts. Then they raped us continuously, day and night.

5.60 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RIKICHI and OKAMURA YASUJI participated in these acts of rape by granting Japanese soldiers access to Korean 'comfort women', by issuing detailed instructions for visits to comfort stations, and by making their visits a routine part of the army life. They also encouraged and approved rapes by Japanese soldiers.

5.61 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RIKICHI and OKAMURA YASUJI planned, instigated, ordered, aided, abetted or otherwise participated in the commission of systematic rape of 'comfort women'.

By their participation in these acts, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RIKICHI and OKAMURA YASUJI committed:

Count 7:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (rape and inhuman and cruel treatment).

Count 8:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (rape and inhumane treatment).

2. Torture, Mutilation, Wilfully Causing Great Injury (Counts 9-10)

5.62 Hong Gangrim (1922 -), who was recruited by a old lady to a comfort station at Bongchun, China, in 1938, had so much pain after taking Japanese soldiers. During the regular inspection, an army doctor said that the vagina was too small. He slit the entrance area with knife without anesthesia.⁵⁸

5.63 Most of other Korean 'comfort women' were also subjected to destruction of genital organs and sexually transmitted diseases from multiple, repeated and

⁵⁸ See Annex II below.

continuous gang rape for an extensive period of time. In most cases, they lost reproductive capabilities. This, among others, has caused life-long suffering and hardships to the survivor victims.

5.64 They were also subjected to other forms of violence such as torture and assault with bodily harm. In addition to the cases above mentioned, the testimony of Choi Hwasun (1927 -) gives another example. When she refused to have intercourse with a Japanese officer who came at night in 1944, he tried to force his penis into the mouth and she bit it. He angrily slashed her face several times and called the sentry to beat her. The latter took her out and battered with clubs. After two days unattended, she woke up from unconsciousness in a warehouse. She got a right hand smashed. No treatment was given to her.⁵⁹

5.65 Kim Tae Il was born in 1916. She was working as a nurse in the Tennoji hospital in Osaka in 1934. One night, when she was 18, the director of the hospital raped her. Afraid that his crime would be exposed, he had her name put on the list of 'comfort women' for the Tokyo 12th Division of the Japanese Army. In a 'comfort station' that was situated in Changchun, she was called 'Ishikawa Sujie' or No. 12 which was her room number. Every morning the 'comfort women' were lined up in the yard of the 'service club' and forced to bow in the direction of the Japanese Imperial Palace. They were forced to serve 30-40 soldiers a day, from 6 a.m. to 2 a.m. the next morning. When she was moved to the 6th division, there was a woman called 'Hanabo' who became pregnant. When she refused the demand of a drunken Japanese called 'Tanaka', he kicked her in the belly, cut her abdomen open, took out her fetus, and cut it to pieces. He then collected all the Korean 'comfort women' together while he disemboweled his victim with his sword and hung her intestines around the necks of the 'comfort women. After this, he ordered them to lick her blood off the floor. Many of them fainted and some of them died of heart failure from the shock. One day, Tanaka came to her room with a dog. He set the animal on her, saying, I did her. Now it is your turn. The dog sprang at her and bit her. She became unconscious, but Tanaka poured cold water on her and gratified his sexual lust again. The Japanese, after anesthetizing her, put gasoline-soaked cigarettes into her mouth,

⁵⁹ She was forced to get in the truck by a head of village at Hapchum, South Gyung-sang Province in 1942. His surname was 'Ha'. He brought her to a house of a rich man in Taegu. She was asked to pretend to be their daughter. The recruiter then took her to a textile factory. After a while, a Japanese group leader of the factory told her to be sent to a factory in Japan. But she was shipped, via Pusan and Japan, to an island on the border between Northern Manchuria and the U.S.S.R. in the winter of 1943. See *The Korean 'Comfort Women' Forcibly Taken Away*, vol. III (1999), pp. 193 - 199.

nose and vagina and lit them, burning all the parts of her body.

5.66 Jong Ok Sun (1920-1998) was forced into sexual slavery in Gwangzhu. When she was 17 she unsuccessfully attempted to escape. She was captured again and horrible tortures were inflicted upon her. A soldier beat her with an iron club, on the head as well. She became unconscious and then he poured water into her mouth through a rubber hose. Her stomach then proceeded to swell with water, then placed a board onto her stomach and stepped on it. Water then gushed out of her nose and mouth. As another form of torture, the Japanese placed stamp marks on her body saying these Korean devils must die in agony. They pulled out her lips and pressed ink into those too, leaving another tattoo. She still retains those same tattoos on her breasts, abdomen, back and lips, and even on her womb.

5.67 Ri Chun Hwa (1920-1998) was forced into sexual slavery in Suyang. Only for having served fewer Japanese soldiers she was severely punished. She was ordered to hold a steel bar, weighing 10 kilos, high above her head. When ever it dropped in height she was repeatedly whipped. She even sometimes fainted. The Japanese also used electric shocks as a form of torture. A 'comfort woman' named Sadako refused a Japanese soldier and was shockingly abused. He kicked the back of her head with so much force that one of her eye-balls came out. She was then repeatedly raped after that.

5.68 In 1945, Kim Bokdong and other 'comfort women' were driven to the 10 Army Hospital in Singapore. There were already about 300 others. The Japanese soldiers gave nurse training to them in an effort to conceal and hide their criminal system of comfort stations before the arrival of the Allied. These women had frequently been forced to give blood transfusions. After the blood drawing, she could hear a 'wing' sound in the ear and felt dizzy.⁶⁰

5.69 These violent acts were more the eventual outcome of the Japanese policy of comfort stations than isolated incidents. There is no known case of the punishment of the perpetrators of these brutal acts.

5.70 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RIKICHI, and OKAMURA YASUJI participated in these acts of torture by instigating Japanese soldiers to rape Korean 'comfort women'. They took no meaningful steps to prevent these acts and to punish those responsible for torture.

5.71 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RIKICHI, and OKAMURA YASUJI planned, instigated, ordered, aided,

⁶⁰ See Annex II below.

abetted or otherwise participated in the commission of torture of 'comfort women'.

By their participation in these acts, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RIKICHI, and OKAMURA YASUJI committed:

Count 9:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (torture and wilfully causing great suffering, mutilation, outrages upon personal dignity).

Count 10:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (torture).

3. Enslavement (Counts 11-12)

5.72 Korean 'comfort women' were forced to endure slavery-like conditions, deprived of human dignity and self-determination of any kind while continuously raped. They were subjected to a virtual detention system with the military on guard. Freedom of movement was almost nonexistent: supervising soldiers even accompanied women on holiday outings. Severe punishments, often with public beheadings, were inflicted upon those who tried to escape. Although army tickets were issued for the purpose, most 'comfort women' were not paid for their sexual services which were not voluntary after all. All too frequently, ill, menstruating or pregnant 'comfort women' were forced to receive Japanese soldiers. Regulations made it compulsory to use contraceptives ('Sakku') provided by the military. They were also subjected to forced labor such as cooking, laundering, and nursing.⁶¹ Together with violent methods, debt was a tool to maintain control over 'comfort women'. In some cases, debt had initially been incurred through payment of money prior to deportation and increased over time.⁶² More frequent was the case of heavy indebtedness after being forced into comfort stations. Rooms allocated to 'comfort women' at comfort stations were often tiny cells, frequently with no proper walls. In the frontier areas, they had been obliged to travel to army barracks and forced to serve Japanese soldiers in make-shift army tents,

⁶¹ See the Testimonies in Annex II.4 below.

⁶² See the Testimonies in Annex II.3 below.

sometimes in fox holes. Food rationing and clothing was not sufficient in most cases.

5.73 While the condition of 'comfort women' was already one of slavery, the comfort women (especially Korean comfort women) who were part of the portable comfort stations were under particular danger because they were taken all the way to the front lines. As a result, civilian women were not only enslaved, their very lives were subjected to military designs.

5.74 Top Japanese military officials even made guidelines for the women who became 'comfort women' and for the soldiers, in order to draw maximum benefits out of the comfort women system. An example of this is the Comfort Station Regulation, of 20 December 1944, in Provisions on Internal Services of the 3475 Mountain Unit, the 24th Army in Okinawa. The Commanding Officer was Amamiya Kutsumi, Lieutenant General. The Regulation provided that soldiers, on the one hand, should strictly observe the concept of condominium and the concept of occupation (or individual possession) shall be forbidden. On the other, it provided that comfort women should understand the client's position and treat whoever with fairness as the first virtue, bear in mind to serve them for the best they can, handle everything with care so as not to spoil the body and be neglecting the service.⁶³ This proves clearly the intention to prohibit the show of emotions and to limit these captured women to objects of sexual release. It also reveals the extent to which these women were debased and enslaved.

5.75 Kim Bokdong was dragged into various comfort stations from Guangdong, Hong Kong, Singapore, and Indonesia. As seen above, she was forced to do nursing work near the end of war. Among others, the Guangdong area was controlled by the 21st Army under the command of ANDO RICHICHI, Lieutenant General. Just before his arrival in Guangdong and after its occupation, the 21st Army made request to the Ministry of Internal Affairs and the Taiwanese Government-General for the recruitment of 'comfort women' to establish comfort stations there.⁶⁴ By April 1939, the Headquarters of the 21st Army reported that comfort stations have been set up and 'comfort women' under the army control numbered 850.⁶⁵⁶⁶

63 Wurasoe Shisha Editorial Board, *Wurasoe Shisha (History of the City of Wurasoe)* (1984), 92/Bun 1.

64 Secretary of the Security and Safety Division of the Ministry of Internal Affairs, *Inquiry on Women travelling to China*, 4 November 1938.

65 *Wartime Ten-Day Report (Rear Matters)*, 11-20 April 1939. See also testimonies and photographs of soldiers of the 21st Army compiled in Nishino Rumiko, *Comfort Women and Fifteen Year War* (1993).

66 In 1941, the stationing force in Guangdong was changed to the 23rd Army belonging to the China

5.76 Mun Okju was compelled to follow the army when the Divisional Headquarters at Mandalay moved to Akyab (Sittwe) in 1944.⁶⁷ The commander of the 55 Division now was Hanaya Tadashi (from October 1943 to July 1945). She was moved again to Prome, then to Rangoon in a 'Rangoon Gaikan' comfort station. After three months there, her group was transferred by train to Thailand. Then they were moved to Ayutthaya on a military truck. They were trained to care for the wounded till the end of war.⁶⁸

5.77 Pak Yongsim was subjected to serve at a 'Kinsui-rou' comfort station in Nanjing for about four years starting in 1938. The comfort station ringed with barbed wire was 500 meters away from the army barrack. Her new given name was 'Udamaru'. The area was under the control of the Central China Expeditionary Force whose commander at that time was Hata Shunroku.⁶⁹

5.78 While guarded by two Japanese soldiers, she was then sent to a comfort station at Lashio in Burma via Shanghai. The headquarters of the 56 Division belonging to the Burmese Area Army was stationed at Lashio under the commander of Matsuyama YUzo.⁷⁰ The 'Ikkakuro' comfort station was placed in a mountainous area with no civilian house. She was given another name 'Wakaharu'.⁷¹

5.79 After two years, she was transferred to Lameng (or Matzuyama), Burma, where the 113 Regiment of the 56 Division was stationed. As soon as she arrived, the ferocious attack by the Allies began. She and other 'comfort women' had to carry rice balls to soldiers even in the midst of bombardments. Among 12 'comfort women' there, 8 were killed in the air attack and 4 survived. When the Japanese defense army was defeated, she and other 3 Korean 'comfort women' were taken prisoner by the Chinese army. She was pregnant when captured.⁷²

Expeditionary Force under Hata Shunroku from March 1941 to November 1944. The 21st Army invaded and occupied Hong Kong by December 25 1941. Consequently, Kim Bokdong appears to be forcibly transferred to Hong Kong. On the existence of 'comfort stations' in Hong Kong, see *ibid.*

67 A Japanese Prisoner of War, soldier of 112 Infantry Regiment, captured on 7 February 1942, stated that There were Korean and Japanese prostitutes in AKYAB, and some had been brought up to HPARABYIN and even ALETHANGYAW, but they had been strictly reserved for officers, a fact that had greatly angered the troops. General Headquarters, South West Pacific Area, Allied Translator and Interpreter Section, South West Pacific Area, *Research Report: Amenities in the Japanese Armed Forces*, (16 February, 1945), p. 8. The Allied translators used the word 'prostitutes' for 'comfort women' in Japanese.

68 See Howard, *op. cit.*, p. 113.

69 See the Selective Testimonies in the Appendix below.

70 After landing at Rangoon in March 1942, the Japanese troops of the 52 Division marched north to Lashio and Myitkyna. *Ibid.*

71 A former soldier of the 56 Division remembered her name. After taken prisoner, he met again those comfort women in the picture, filed before the Tribunal, at the Kunmying camp.

5.80 When Song Shindo bore a second baby, she was moved from 'Sekaikan' to a navy comfort station in Hankou where she was forced to do laundering, cleaning and other forced labor. The baby was removed from her to other people. She was then sent to another comfort station at Kakushu. She was dragged to various comfort stations in Anni, Choan, Hoking and so on. These stations belonged to specific army units in war fields. She gave birth a second time. Once again the baby was sent to strangers. Afraid of being expelled, she once had an abortion with traditional medicine. She and other 'comfort women' were forced to witness the massacre of Chinese prisoners of war. Japanese soldiers dug a hole and slain them with swords. After this, these 'comfort women' had to fill wine glasses of soldiers in the party. They sometimes had to stand guard as sentry. There was not even a nominal 'salary'. The army took away even a little bit of occasional 'income' in the name of defense contributions.⁷³⁾

5.81 Kim Yong Suk was born in 1924. She was taken to Japan and forced into sexual slavery for nearly one month in Nagoya, Okinawa. She was then again taken to Shanghai and served the Japanese soldiers in an open-air tent. Later, she was moved to Xizhou via Dalian. The Japanese army took them to a desolate place and allotted a tent to every five women. She was called 'Tomiko' in Japanese. Those Japanese ordered that the women entertain 100 soldiers on Saturday, forcing the women to undertake the task unconditionally. So they began to call Saturday 'death day' and were continuously raped even after losing consciousness.

5.82 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo planned, instigated, ordered, aided, abetted or otherwise participated in these acts of enslavement from at least 1937 until 1945. These acts took place within the premises of the Japanese Imperial Army or in its vicinity. Comfort stations were under the direct control and supervision of the Army exercised by Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo in concert with other high or low level officers and soldiers.

By their participation in these acts, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo committed:

⁷² An US army officer interrogated them on 3 September 1944. While staying at the prisoner-of-war camp in Kunmyng, she miscarried due to bleeding and surgery. She later returned to North Korea.

⁷³ See the Selective Testimonies in the Appendices below.

Count 11:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (slavery, unlawful confinement, inhuman treatment, wilfully causing great suffering, attack civilians, excessive incidental death, injury, or damage).

Count 12:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (enslavement).

4. Persecution (Counts 13 - 14)

5.83 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo from at least 1937 until 1945, while acting in the capacity of various government and military positions, together with those belonging to the Japanese Imperial Army and the Government under their command and control and in common purpose with them, persecuted Korean women and girls at Japanese military comfort stations against 'comfort women' on racial grounds.

5.84 As part of the persecution, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo planned, instigated, ordered, aided, abetted or otherwise participated in the execution of a common plan involving:

- a. the systematic forcible recruitment and transfer of female civilian inhabitants of Korea into comfort stations over a long period of time from at least 1937 until 1945;
- b. the prolonged confinement within comfort stations of the recruited Korean women;
- c. the repeated and systematic rape, torture, and beatings of Korean women at comfort stations;
- d. the prolonged and systematic enslavement of Korean women at comfort stations;
- e. numerous killings of Korean women at comfort stations;
- f. the establishment and perpetuation of inhumane conditions against Korean women within comfort stations.

5.85 In concert with Japanese political leaders, military commanders, or authorities in Korea, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo participated in the above acts by authorizing, permitting, or condoning the Japanese comfort stations system, by providing comfort stations and other sexual slavery facilities, by being in their respective positions of Emperor, Prime Minister, Army Minister, Commanders and by establishing living conditions characterized by repeated rape, slavery, constant physical and psychological assault, forced labour and inhumane treatment, 'comfort women'.

5.86 They established a pattern of sexual slavery whereby the Japanese military, the administrative, civilian operators removed Korean women from their homes and brought them to army barracks and areas under Japanese military occupation and provided comfort stations in which these acts of sexual slavery took place.

5.76 The Japanese military sexual slavery is also part of the Japanese policy to exterminate the national identity of the Korean people. Repeated rapes resulted in the destruction of the reproductive organs of the women. Women were exposed to venereal diseases, the abuse of the '606' (salvarsan) injection, unwanted pregnancy and brutal intervention of it. The situation of Korean women is in sharp contrast to that of Japanese women who were officially encouraged to give birth as many as possible in the wartime.

5.77 The total number of 'comfort women' is estimated to be over 200,000.⁷⁴ From the testimonies of survivors, the majority of the 'comfort women' were the Korean under the Japanese domination. From the above, the forcible recruitment and sexual exploitation of the Korean 'comfort women' were practiced as part of the genocidal policy of the Korean people.

By their participation in these acts, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo committed:

Count 13:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (attack

⁷⁴ See Estimate of the Total Number of the Korean 'Comfort Women' Drafted for Japanese Military Sexual Slavery, Appendix 2.

against civilians).

Count 14:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (persecution).

5. Murder (Counts 15-16)

5.87 There were many cases of murder according to the testimonies from victims.⁷⁵ The inhumane conditions inflicted upon 'comfort women' sometimes consummated in murder as a form of punishment referred to above. Murder were committed from time to time in a leisurely manner. As 'comfort women' were forced to accompany Japanese forces to battlefields or frontlines, they were exposed defenselessly to threats of death rather than evacuated to the safer areas. During the Allied bombings, many were put to the defense position whilst undergoing sexual slavery. No actions were taken to protect them from the effects of war: they were not treated differently from other members of the Japanese forces, regarded merely as 'expendables', not as human beings.

5.88 The contraction of venereal diseases such as syphilis brought many 'comfort women' to death.⁷⁶ Others died from tuberculosis and malaria.⁷⁷

5.89 Rape and the slavery condition at comfort stations were such that many 'comfort women' committed suicide as noted above. Kim Bokdong attempted to suicide on the first day of arrival at the comfort station in Guangdong. The army medical officer who examined venereal diseases, came in first. She tried to run and hide in the backyard. But the man pursued and hit her cheeks hard. She was beaten till the face got numb. She had to obey him. She felt so much pain bleeding underneath. The next day she decided to kill herself with two other girls. They asked a Chinese cleaner to bring a poison. He brought instead Chinese wine. Yet they decided to drink to death. They fell unconscious for three days even after the medical soldiers cleansed their intestine.⁷⁸

5.90 Jung Song Myong, decided to commit suicide after being raped by the Japanese soldiers in Mekutera 'comfort station' in Myanmar. She came to the

⁷⁵ See the Testimonies in Annex II.3 below and the Selective Testimonies in the Appendix below (Pak Yongsim).

⁷⁶ See Annex II below.

⁷⁷ See Annex II below.

⁷⁸ Ibid (Kim Bokdong).

riverside, 'put a bucket on her head, dove into the water but was saved by the other 'comfort women'.

5.91 When Ri Gyong Saeng was pregnant at the age of 16, a Japanese cut her abdomen with his sword, took out the fetus, cut it into pieces and threw it into the river. He even too her womb out saying This will prevent you from getting pregnant again. When Kim Young Suk (1924) gave birth to a child, a Japanese soldier trampled him to death.

5.92 When 'comfort women' got pregnant, they were forced to undergo. Hwang Geumju (1922 -) testified that, when she got injected No. 606 not knowing the pregnancy, she had a swollen body feeling chilled and with blood letting underneath. Then they took her to the army hospital and the doctor scraped the womb. With three or four times in this way, pregnancy was no longer possible.⁷⁹⁾ Cases of infanticide were also reported.

5.93 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo planed, instigated, ordered, aided, abetted or otherwise participated in these acts of murder against 'comfort women'.

By their participation in the above acts or omissions, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo committed:

Count 15:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (willful killing, murder).

Count 16:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (murder).

6. Other Inhumane Acts (Counts 17-18)

5.94 The Japanese military, regularly and for a lengthy period of time, injected Korean 'comfort women' with the drug known as 'No. 606' for the professed purpose of preventing sexual diseases. This caused severe health deprivation, often

⁷⁹ See Annex II below.

leading to forced sterilization, the deprivation of reproductive capability, and often death.

5.95 Kim Gunja contracted syphilis and was given No. 606 injections for three days. She got pregnant once, but miscarried.⁸⁰⁾

5.96 Opium, morphine and other intoxicating drugs were used by Japanese soldiers.

5.97 Acts charged in other Counts above shall come alternatively under this heading.

5.98 Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo planed, instigated, ordered, aided, abetted or otherwise participated in the acts of inhumane treatment against 'comfort women'.

By their participation in these acts, Hirohito, Tojo Hideki, Minami Jiro, Itagaki Seishiro, Umezu Yoshijiro, ANDO RiKICHI, OKAMURA YASUJI and Matsuyama YUzo committed:

Count 17:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (inhuman and cruel treatment, and enforced sterilization).

Count 18:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (inhumane treatment).

Crimes Committed in the Immediate Aftermath of the War Defeat (Counts 19-20)

5.99 When the Japanese military were defeated, they abandoned an unknown number of Korean 'comfort women' at the battlefield without providing them with any means of subsistence. Many of these women were killed in the confusion of war. Some were taken prisoner by the Allied forces. Others returned home alone by foot. Still others had to find a new life in a foreign country and are still waiting to be repatriated.⁸¹⁾

⁸⁰ See the Selective Testimonies in the Appendices below.

⁸¹ See the Testimonies in the Annex II.4 below.

5.100 Kim Gunja met the liberation at a Gokasi comfort station where she stayed for a year and a half after Huichun from 1943. The area was under the control of the 127 Division of the Kanto Army under the command of Koga Ryutaro. The manager did not give her any money and told the 'comfort women' to go if they wanted. Seven of them walked about two weeks to reach Bakdu Mountain. It took a further month and eight days, sometimes on trucks, for them to arrive at Chulwon, north of Seoul.

5.101 Jong Song Myung greeted the 'liberation day' in Mekutera 'comfort station'. One evening when the war was coming to a close, the Japanese ran away secretly without informing the 'comfort women' or providing any foodstuff. Nineteen Korean 'comfort women', including Jong, were left wandering in the forest feeding on grass and leaves and finally arrived after one month. They were only able to return home by ship after 6 months. This was in 1947.

5.102 In addition to these deliberate acts of abandonment, the Japanese military perpetrated mass killings of 'comfort women' of unknown numbers.⁸²⁾ There are testimonies by survivors mentioning the massacres in Guam, Palau, the Truk Island in the Pacific and other front areas against the Allied forces. As in Tengchung, China, in areas where the Japanese troops were expecting the immediate defeat, they massacred 'comfort women'.⁸³⁾ In Okinawa, Korean 'comfort women' were forced to stay with the defending soldiers who were exposed to the deadly Allied bombing. There had been no survivor of either soldier or 'comfort women' in certain islands belonging to Okinawa.

5.103 These killings are believed to be committed with the intent of systematically destroying the evidence of the crimes of the Japanese military and the government particularly against 'comfort women'.⁸⁴⁾

5.104 On 15 August 1945 at a liason meeting of the Army held at Itsigayatai, an oral order was issued to destroy essential secret information received from the Ministry of Army.⁸⁵⁾

5.105 Hirohito, Tojo Hideki, Itagaki Seishiro, Umezu Yoshijiro, OKAMURA YASUJI and Matsuyama YUzo planned, instigated, ordered, aided, abetted or otherwise participated in the acts of murder, killings and mass killings against 'comfort women'.

82 Ibid.

83 See the photograph filed before the Tribunal.

84 This has also been the main reason for the difficulty in calculating the exact total of Korean 'comfort women'.

85 For denial, concealment, and distortion of the crime of Japanese military sexual slavery still being committed, see Part II of the present document.

By their participation in these acts, Hirohito, Tojo Hideki, Itagaki Seishiro, Umezu Yoshijiro, OKAMURA YASUJI and Matsuyama YUzo committed:

Count 19:

a WAR CRIME recognized in Article 2 (1) of the Charter of the Tribunal (wilful killing, murder and mass killings).

Count 20:

a CRIME AGAINST HUMANITY recognized in Article 2 (1) of the Charter of the Tribunal (murder, killings and mass killings, persecution).

Damages and Sufferings inflicted upon Victims of the Japanese Military Sexual Slavery

6.1 The Japanese military sexual slavery has inflicted upon Korean 'comfort women' a wide range of extreme physical and reproductive damages and ailments, among others. The abortions following pregnancy and the sexually transmitted diseases experienced due to the systematic rape inflicted by countless men have left many women victims infertile. The injections of No. 606 (salvarsam) to prevent sexually transmitted diseases for extended periods were also given to pregnant women, and the consumption of medicines deriving from arsenic induced in edema, acute nausea, abdominal pain, muscle convulsions, loose bloody stools, sleep disturbances. There were also many cases of pregnant women with blood discharges. Due to the assault and torture, the majority of these women still suffer from physical symptoms such as chronic headaches, indigestion, sleep disturbances, insomnia, heart palpitations.⁸⁶⁾

6.2 The surviving victims of the crime of Japanese military sexual slavery are suffering gross psychological trauma. This has brought speech disorder, identity crisis, loss of self-respect and self-confidence, heavy reliance on painkillers and other medicines, tobacco and/or alcohol addiction and incessant nightmares. It also affects their general ability of adjustment, emotional state, and ability to make interpersonal relationship, among others. They are experiencing severe depression, pessimism, instability, loss of will to live and so on. They are also developing

86 See Lee Suhyon, History Inscribed on the Body: Focus on the Physical Suffering of the Japanese Military 'Comfort Women' in the Appendices below.

symptoms such as migraine, hypertension, rheumatism. The denial of responsibility by Japan has become a second source of inflicting of damages and suffering to them.⁸⁷⁾

6.3 The victimization process and the resulting experience of Korean women as 'comfort women' for years have inflicted even more long-lasting damages to the survivors of the Japanese military sexual slavery. Diaspora or destruction of their families is one of them.⁸⁸⁾ The forcible recruitment brought to them unwanted separation from home and their country. They were forced to stay in an unknown, foreign terrain. A lot of them were left behind abandoned with no means to return home. Even for those who could return, there were too often no home or family to go to as the whole family has already been disbanded with other members likewise drafted as soldiers or laborers. They are 'uprooted' and 'lost' children. The existence of a 'comfort woman' in her family is considered a source of insult and dishonor. Most of returned 'comfort women', dread of social stigma, have no means of living and avoid seeing their families out of shame or because they did not want to be burdensome to them. This leaves them in perpetual poverty and social alienation. They are further experiencing various difficulties in social rehabilitation.⁸⁹⁾

87 See Lee Chul-won, Brief Report for Psychological Assessment of the Women Victims of Sexual Slavery Committed by the Japanese Military in the Appendices.

88 See the Testimonies of Annex II.4 below.

89 See Annex II and Young-Hee Shim, Silence and Social Aftermath of the Korean 'Comfort Women': Focusing on their Life After the Return in the Appendices.

(Part II: State Responsibility)

THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL ON JAPANESE
MILITARY SEXUAL SLAVERY IN 2000

The PROSECUTORS OF THE TRIBUNAL
(NORTH AND SOUTH OF KOREA)

APPLICATION AGAINST JAPAN

1. The Prosecutors of North and South of Korea of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (hereinafter the 'Tribunal'), pursuant to the authority granted under Article 11 of the Charter of the Tribunal, submit the following: Application of North and South of Korea against Japan for Japan's Military Sexual Slavery.

I. Statement of Facts

2. States are held responsible for any internationally wrongful act by their organs under international law. International responsibility of Japan is incurred by, *inter alia*, the acts of the Japanese Emperor, Prime Minister and other Ministers of the Cabinet, officials and the police of both the Japanese government and the Government General in Korea, and officers, soldiers and military civilians of the Japanese Imperial Army including Army Ministers relating to the establishment and management of Japanese military sexual slavery are.

3. Further, acts of civilian operators involved in the recruitment of military 'comfort women' and management of comfort stations are also attributed to Japan as they acted *de facto* on behalf of the State. The Japanese government and the military exercised an 'effective or overall control' over these acts.⁹⁰⁾

90 United States Diplomatic and Consular Staff in Tehran, Judgment, ICJ Reports 1980, para. 74; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, ICJ Reports 1986, para. 115. See also Prosecutor v. Tadic, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Trial Chamber II, Judgment of 7 May 1997, para. 595 and Prosecutor v. Dusko Tadic, International Criminal Tribunal for the former

4. From the facts and evidence as will be submitted before the Tribunal, it is undeniable that there had been instructions and involvement by the Japanese government and the military not only in the establishment and management of Japanese military comfort stations, which began to be set up at least from 1937, but also in the forcible recruitment and deportation of military 'comfort women'. Direct control and supervision over these women was exercised with the national and institutional support. After denial for a long time, the Japanese government itself acknowledged the involvement of former Japanese Empire in Japanese military sexual slavery,⁹¹ yet with accepting its responsibility.

5. These acts or omissions constitute violations of international obligations of Japan giving rise to State responsibility under the then existing international law. There is no question of retroactive application of international law as developed after the Second World War, as alleged by Japan, since there existed applicable rules of international law, both conventional and customary, at the time when the Japanese military sexual slavery was established and managed.

6. Japan continued to deny its involvement in the establishment and maintenance of the Japanese military sexual slavery despite strong demands from the victims and the public release of documents by the civil society. It was not until 4 August 1993 that the Japanese government acknowledged the direct involvement in establishing and managing rape camps called comfort stations during the Second World War, and confirmed that 'comfort women' were mobilized against victims' will.⁹²

7. Although 'apologies' were made from time to time,⁹³ this 'apology' falls short of accepting legal responsibility. The Japanese government continues till today to deny its legal responsibility for the establishment and maintenance of comfort stations.

II. Denial of Responsibility by the Japanese Government

Yugoslavia, Appeals Chamber, Judgement of 15 July 1999, para. 124.

⁹¹ UN Doc. E/CN.4/1996/137, annex I.

⁹² UN Doc. E/CN.4/1996/137, annex I.

⁹³ For instance, in July 1995, on the occasion of the fiftieth anniversary of the end of the Second World War, Japanese Prime Minister Tomiichi Murayama stated that the problem of the so-called 'wartime comfort women' is one such scar, which, with the involvement of the Japanese military forces of the time, seriously stained the honour and dignity of many women. This is entirely inexcusable. I offer my profound apology to all those who, as wartime comfort women, suffered emotional and physical wounds that can never be closed. Gay J. McDougall, *Systematic rape, sexual slavery and slavery-like practices during armed conflict*, UN Doc. E/CN.4/Sub.2/1998/13 (22 June 1998), Appendix: An Analysis of the Legal Liability of the Government of Japan for Comfort Women Stations Established during the Second World War, para. 3.

8. Japan argues the following substantive grounds for denying its international legal responsibility concerning Japan's military sexual slavery:

(i) The recent developments or advances of international criminal law may not be applied retroactively;

(ii) the crime of slavery does not accurately describe the system established through the comfort stations and that the prohibition against slavery was not, in any event, established as a customary norm under applicable international law at the time of the Second World War;

(iii) acts of rape in armed conflict were not prohibited by either the Regulations annexed to the Hague Convention No. IV of 1907 or by applicable customary norms of international law in force at the time of the Second World War; and

(iv) the laws of war would only apply, in any event, to conduct committed by the Japanese military against nationals of a belligerent State and would not, therefore, cover the actions of the Japanese military with respect to Japanese or Korean nationals, since Korea was annexed to Japan during the Second World War.⁹⁴

9. Consequently, the Japanese government argues that there no longer exists responsibility to make compensation apart from the payment of monies for condolence or resettlement on humanitarian grounds. In addition, the Japanese government asserts that any civil or criminal case concerning military 'comfort women' would now be time-barred by the application of statutory limitations.

10. Moreover, the Japanese government has repeatedly made the argument that the problem of post-war compensation has been completely settled with the conclusion and implementation of the San Francisco Treaty and other reparation agreements or peace treaties made pursuant to the former. With regard to Korean 'comfort women', Japan claimed particularly that, with the conclusion of the 1965 agreement between South Korea and Japan, the right of the Korean government to seek compensation, including claims of individuals, was abandoned completely and finally, leaving no basis for further claims.

11. Based on this position, the Japanese government set up Asian Women's Fund to protect women's human rights in Japan and the world. Particularly with

⁹⁴ Radhika Coomaraswamy, Special Rapporteur of the Commission on violence against women, UN Doc. E/CN.4/1996/53/Add.1.

respect to the 'comfort women', the Japanese government made the AWF convey to these women 'the sincere apologies and remorse felt by the Japanese people' through 'atonement' funds that are raised directly from donations made by the Japanese public.

III. Legal Grounds for Responsibility of Japan Concerning Japan's Military Sexual Slavery

12. There is no question of retroactive application of international law as developed after the Second World War, as alleged by Japan, since there existed applicable rules of international law, both conventional and customary, at the time when the Japanese military sexual slavery was established and managed.

Violation of International Humanitarian Law

13. The provisions of the 1907 Hague Convention No. 4 and Regulations Respecting the Laws and Customs of War on Land, entered into force in 1911 in relation to Japan, apply to acts of the Japanese government and the military against Korean 'comfort women'. As stated in Part I of the Korean Indictment, Korea had been under the military occupation since 1904 till the end of the Second World War.⁹⁵⁾ Although Korea acceded to the 1899 Hague Convention, it could not do so under the Japanese rule. The provisions of the Hague Convention have been established as customary international law at least by 1939 as affirmed by the International Military Tribunals at Nuremburg and for the Far East.

14. Customary international law of war prohibits, *inter alia*, rape, slavery, wilful killing, murder, mass killing, wilfully causing great suffering, mutilation, unlawful detention, kidnapping, deportation, outrages upon personal dignity and other inhuman and cruel treatment against civilians.⁹⁶⁾

15. Japan as well as other States is under the international legal obligation to prosecute and punish war crimes.

Violation of International Law on Slavery and Slave Trade

⁹⁵ Article 42 of the 1907 Hague Regulations, stipulates that Territory is considered occupied when it is actually placed under the authority of the hostile army.

⁹⁶ Article 46, the Hague Regulations, provides: Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. See also the so-called 'Martens clause' in the Preamble of the Hague Convention.

16. Japan is in violation of the customary principle of international law relating to the abolition of slavery and the prohibition of slave trade by recruiting and victimizing Korean women as Japanese military sexual slaves.

17. The widely accepted definition of slavery is found in the 1926 Slavery Convention.⁹⁷⁾ While Article 1 of the Convention defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, it provides that slave trade include all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and in general, every act of trade or transport in slaves.

18. The prohibition of slavery and slave trade, one of the oldest human rights norm on human dignity and freedom, has already established its status as international customary law and *jus cogens* well before the establishment of the system of Japanese military comfort stations. Slavery has also been made an international crime in times of war or peace well before the Second World War.

19. Japan had punished a slave trader as early as 1872⁹⁸⁾ and it implemented, albeit partially, domestic legislation concerning slavery by criminalizing acts of kidnapping and procurement at the relevant time. Although Japan is not a party to the 1926 Slavery Convention, it is clearly bound by international customary law prohibiting slavery and the conflicting assertion of the Japanese government is groundless.

20. From victims' testimonies and evidence put before the Tribunal, it is clearly established that Japan subjected Korean women to slavery conditions by establishing comfort stations, forcibly recruiting them through deception or abduction and treating as chattels, not human beings, 'comfort women' who had been systematically and repeatedly raped and whose human rights including their right to life had been negated and violated in a thoroughly and complete manner. Accordingly, Japan violated international legal norms prohibiting slavery by establishing an unprecedented sexual slavery system created and run by the State. Moreover, the direct involvement of the Japanese government and the military in

⁹⁷ Signed in Geneva on 25 September 1926, entered into force on 8 March 1927, League of Nations Treaty Series, vol. 60, p. 253.

⁹⁸ See International Fellowship of Reconciliation, Recommendations to Japan on sexual slavery, 7 February 1994 (communication to the Government of Japan) cited in McDougal report of 1998, annex, para. 13.

the transportation of forcibly drafted 'comfort women' to comfort stations in war theaters indicates that the State of Japan itself engaged in slave trade in flagrant violation of international law.

Violation of International Law on Traffic in Women and Children

21. Japan is in violation of the following international treaties relating to traffic in women and children:

- (i) International Agreement for the Suppression of the White Slave Traffic of 18 March 1904;⁹⁹⁾
- (ii) International Convention for the Suppression of the White Slave Traffic of 4 May 1910;¹⁰⁰⁾ and
- (iii) International Convention for the Suppression of the Traffic in Women and Children.¹⁰¹⁾

Japan acceded to these treaties on 21 October 1925. Sexual exploitation of women, at least below the full age, to entice, procure and abduct by forcible means has become part of customary international law by 1930s.¹⁰²⁾

22. In recruiting Korean women for Japanese military comfort stations, Japan acted in a manner prohibited by conventional and customary principles of international law.

Violation of International Law on Forced Labour

23. Japan violates the ILO Convention No. 29 Concerning Forced or Compulsory Labour, signed and ratified by Japanese government by 21 November 1932.¹⁰³⁾

24. Article 2 of the Convention defines forced labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Article 11 prohibits

⁹⁹ League of Nations Treaty Series, vol. 1, p. 84.

¹⁰⁰ British and Foreign State Papers, vol. 103, p. 244; Martens, Nouveau recueil gral de trait (3d ser.), vol. 7, p. 252.

¹⁰¹ League of Nations Treaty Series, vol. 9, p. 416.

¹⁰² For the non-applicability of the Japanese declarations under these treaties which excluded Korea and other territories from its territorial scope, see Legal Memorandum on the Issue of State Responsibility (submitted before the Tribunal by the International Prosecutor, Tina Dolgopol), p. 8. More specific arguments on other issues will be made in a supplementary memorandum.

¹⁰³ Adopted on 10 June 1930, UNTS, vol. 39, p. 55.

particularly forced labor of women.

25. As held by the ILO Committee of Experts, Japanese sexual slavery is nothing less than forced labor even during wartime and emergency situations.¹⁰⁴⁾ The Japanese government does not comply with recommendations by the Committee to take concrete measures on Japanese military 'comfort women' issue.

Violation of International Criminal Law

26. Japan is in breach of the principles of international criminal law prohibiting crimes against humanity some of the perpetrators of which are indicted in Part I above.

27. Crimes against humanity are defined, for example, in the Charter of the International Military Tribunal for the Far East: murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Other inhumane acts cover the crime of rape. This provision became established as part of customary international law well before the Second World War and Japan accepted its obligation under the Peace Treaty of 1951.

28. Japan is responsible for its systematic involvement in the commission of crimes against humanity by individuals. Japan is obliged under international law to prosecute and punish perpetrators of crimes against humanity.

Continuing Violations of Human Rights of Victims of the Japanese Sexual Slavery

29. Japan violates the fundamental human rights of Korean women by forcing them into Japanese military sexual slavery. These rights include the rights to human dignity, gender equality, life, physical security, movement, speech, and so on. Japan does not observe its obligation to respect and to ensure human rights

¹⁰⁴ Individual Observation concerning Convention No. 29, Forced Labour, 1930: Japan, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, Part 4A, International Labour Conference, 84th Sess., 1996; Individual Observation concerning Convention No. 29, Forced Labour, 1930: Japan, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, Part 4A, 85th Sess., International Labour Conference (1997); Report of the Committee on the Application of Standards, International Labour Conference, 87th Session, Geneva, June 1999, para. 8.

of victims of Japanese military sexual slavery.

30. Japan does not fulfil the obligation to take steps for the full realization of human rights of victims of Japanese military sexual slavery.

31. Japan continues to be in violation of the fundamental principles of international human rights law by not giving justice to victims of the Japanese sexual slavery till today.

Question of the 1965 Claims Agreement between South Korea and Japan

32. The Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea does not absolve international legal responsibility of Japan relating to Japanese sexual slavery.¹⁰⁵⁾

33. The Agreement purports to deal only with existing 'property' claims and disputes affecting commercial relations between the two countries.¹⁰⁶⁾ No express provision is made on claims relating to the so-called 'comfort women' issue.

34. Being a treaty resolving issues between States, the Agreement does not affect claims for damages of individuals against the Japanese government arising from Japanese military sexual slavery.

34. States cannot waive individuals' claims for damages. The right to an 'effective remedy' is guaranteed under international law as may be exemplified by Article 8 of the Universal Declaration of Human Rights.¹⁰⁷⁾¹⁰⁸⁾

IV. Judgment Requested

¹⁰⁵ Signed on June 22, 1965, UNTS, vol. 583, p. 173.

¹⁰⁶ In re World War II Era Japanese Forced Labor Litigation, Declaration of Professor Kohki Abe in support of Plaintiffs' Oppositions to Motions to Dismiss, filed before the United States District Court, Northern District of California, relating to Sun Yoon Kim v. Ishikawajima Harima Heavy Industries Co., Ltd., et al. and Jae Sik Choe v. Nippon Steel Corp., et. al.

¹⁰⁷ See, e.g., Study concerning the right to restitution, compensation and rehabilitation for victims of human rights and fundamental freedoms: Final report submitted by M. Theo Boven, UN Doc. E/CN.4/Sub.2/1993/8, 2 July 1993; UN Doc. CN.4/1997/104, 16 January 1997, Appendix; Question of the impunity of perpetrators of violations of human rights (civil and political rights): final report prepared by Mr. L. Joinet, pursuant to Subcommission resolution 1995/35, UN Doc. E/CN.4/Sub.2/1996/18, 20 June 1996; Report of the independent expert on the right to restitution, compensation, rehabilitation for victims of grave violations of human rights and fundamental freedoms, Mr. M. Cherif Bassiouni, submitted pursuant to Commission on Human Rights resolution 1998/43, UN Doc. E/CN.4/1999/65, 8 February 1999.

¹⁰⁸ Won Soon Park, Japanese Reparations Policies and the 'Comfort Women' Question, Positions East Asia Cultures Critique, vol. 5, no. 1 (1997), p. 107.

35. Accordingly, while reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence, testimonies and legal arguments, the Prosecutors of North and South of Korea of the Tribunal requests the Tribunal to adjudge and declare as follows:

(a) that Japan, in forcibly recruiting, transferring, and enforcing Korean women to be subjected to sexual slavery in countless Japanese military comfort stations established throughout the Asia-Pacific region at least from 1937 until 1945, in building, furnishing, operating, financing, and supplying these comfort stations and other facilities of sexual slavery, and in directing, encouraging, aiding and supporting Japanese soldiers to commit various crimes against 'comfort women' by means of its agent and surrogates, has violated its legal obligations toward women of South and North of Korea under the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law. These crimes include such acts as sexual slavery, kidnapping, illegal detention, forcible deportation and transfer, rape, torture, mutilation, willfully causing great suffering, enforced sterilization, excessive incidental death, killing, murder, mass killing, inhuman and cruel treatment, and outrages upon personal dignity as indicted in Part I above.

(b) that Japan has violated the customary principle of international law relating to the abolition of slavery and the prohibition of slave trade;

(c) that Japan has violated its legal obligations under a number of international treaties and international customary law relating to the prohibition of traffic in women;

(d) that Japan has violated its legal obligations under the ILO Convention on Forced Labor;

(e) that Japan is responsible for acts constituting war crimes and crimes against humanity for Japan's sexual slavery under international law;

(f) that Japan has an obligation to provide reparations including, but not limited to, a formal apology to victims of Japan's sexual slavery, compensation for damage done them, and punishment of those responsible for crimes referred to in Part I above;

(g) that Japan is to make restitution for the harms incurred by victims of Japanese sexual slavery by such measure as restoration of honour, repatriation of Survivors and the return of the bones of the deceased;

(h) that Japan should take such measures as to prevent repetition of the crime of sexual slavery (these may include memorial, museum, archive center, writing down in history books and other educational measures.)

(i) that Japan is under the obligation to take necessary measures to prosecute international crimes related to the Japanese military sexual slavery;

(j) that Japan has violated and is continuing to violate its legal obligations to respect and ensure human rights of the victims of Japan's military sexual slavery, and to take steps for the full realization of their human rights under conventional and customary international law.

*

Done this 7th Day of December, 2000
Tokyo

Prosecutors of North and South of Korea

_____ HONG Son-ok

_____ PARK Won-soon

_____ JUNG Nam-yong

_____ KANG Jeong-sook

_____ HA Jong-moon

_____ YANG Hyun-ah

_____ CHO Si-hyun

5. 약식 판결문(동경) · 한글

2000년 일본군성노예 전범 여성국제법정 판결문¹⁰⁹⁾

검사단 및 아시아 태평양지역의 사람들

대(對)

천황 히로히토 외, 및 일본정부

인정(認定)에 대한 개요

2000년 12월 12일

판사 : 가브리엘 커크 맥도날드(수석)

판사 : 칼멘 마리아 알히바이

판사 : 크리스틴 친킨

판사 : 윌리 무통가

¹⁰⁹⁾ 이 판결문은 12월 12일 판사단에 의한 요약판결문 일어판을 번역한 것임을 밝힌다(역자 김윤옥).

침묵의 역사를 깨고

1. 1950년대 초두, 아시아 여성들은 50년여에 걸친 고통에 찬 침묵을 깨고, 아시아 태평양지역 전쟁중이었던 1930년대와 1940년대에 자신과 또한 다른 여성들이 일본군 성노예제도 하에서 입은 폭력에 대하여 사죄와 보상을 요구하는 소리를 내기 시작했다. 이러한 피해를 입으면서 살아남은 여성들은 완곡히 '위안부'라고 불리었는데 그 용기있는 증언은 아시아태평양지역 전역에 걸쳐서 다시금 몇 백명의 피해여성들에게 침묵을 깨는 용기를 주었다. 그녀들은 함께 적어도 약 20만명의 소녀나 여성들에게 일본군이 조직적으로 행했던 강간, 성노예제, 인신매매, 고문, 기타의 성폭력의 공포에 대하여 세계가 눈을 뜨게 해왔다. 청춘과 미래를 빼앗긴 그녀들은 폭력의 행사, 강제나 기만에 의해서 징집되고, 매매되어 '위안소', 보다 정확하게는 성노예제 시설에 유입되어 일본군의 주둔지나 전선에서의 생활을 강제 당했던 것이다.

2. 살아남은 여성들의 소리에 귀를 기울이자.
처녀귀신이 되어서 죽고싶지 않다 - 문필기 (한국)

우리는 집에 돌아와서도 울기만 했다. 누구에게도 말할 수 없었다. 말을 하면 죽임을 당하니까. 너무도 부끄러워서 깊은 구멍을 파서 그 안에 파묻어 버렸다 - 마키시마 레가라 데라 크루즈 (필리핀)

저는 인생을 잃고, 더럽혀진 여자로 간주되었습니다. 살아가기 위한 수단도 없고 일도 거의 없었습니다. 몹시 고생했습니다. 다음 세대의 일본인은 그들의 부모들이 이렇게 잔혹한 일을 했다는 것을 알아야 하고, 나의 고통을 알아야 합니다 - 高寶珠 (대만)

남편이 말했습니다. "어차피 쓰레기라면 인간보다는 개가 낫다" - 베렌 아론소 사군 (필리핀)

살아남기 위해서 명령에 따랐어요 - 盧滿妹 (대만)

처녀였던 나를 10명의 남자가 강간했습니다. 하나가 끝나면 다른 하나가 교대하는 것입니다. 우리들은 동물취급을 받았습니다. 질에서 피가 흘러나왔습니다. 끝난 후에는 걸을 수도 없었습니다 - 스하나 (인도네시아)

일본이 용서를 비는 것, 그것을 요구합니다 - 원죽림 (중국)

우리가 필요한 것은 정의입니다. 일본 정부가 책임을 지는것을 요구합니다.... 우리는 진실을 말하고 있어요 거짓말을 하려 온 것이 아닙니다. 일본을 구경하러 온 것이 아닙니다. 우리는 진실을 말하기 위해서 왔습니다 - 에스메랄다 보에 (동티모르)

3. 증언에 나선 피해여성들의 용기는 근래의 성폭력 피해자들에게 용기를 주어서 그녀들도 증언을 하게 되었다. 인권을 옹호하는 사람들이나 학자들이 세계적으로 움직이기 시작했고 정의를 요구하게 되었다. 그런 의미에서 증언에 나선 여성들은 여성의 인권존중이라는 보다 큰 운동이 일어나는데 공헌했고 이러한 범죄가 불처벌로 끝나고 전쟁이나 정복에는 여성에 대한 성적 학대가 부수적인 것이라는 관념을 규탄해 온 것이다.

4. 20세기의 바로 최후시기에 개최된 일본군 성노예제를 재판하는 "2000년 일본군 전범 여성국제법정"은 피해자들 자신에 의한, 그리고 그녀들을 위한 10년 가까이 걸친 노력의 정점을 이루는 사건이다. 이 '법정'은 국가가 정의를 행할 책임을 다는 것을 게을리 해 온 결과로 설치되었다. 이러한 태만의 책임의 첫째는 제2차 세계대전 시 연합국이 1946년4월부터 1948년 11월까지의 극동국제군사법정 '도교재판'에서 성노예제의 증거를 가지고 있었음에도 불구하고 이러한 범죄에 대하여 일본의 책임자들을 기소하지 않았던 것에서 온 것이다. 법정, 특히 국제적으로 구성된 법정이 이러한 대규모적인 조직적 잔학 행위를 무시할 수 있었다는 것은 극히 부당한 일이라고 말해야 한다. 그러나 제일 큰 책임은 55년 이상에 걸쳐서 책임자 처벌도 사죄도 하지 않고 보상 등 유효한 구제조치를 취하지 않았던 일본정부에게 있다. 이러한 정부의 태만은 피해자들이 1990년이래 되풀이해 왔던 요구에도 불구하고, 그리고 두 사람의 유엔특별보고관에 의한 세심한 조사, 나아가서는 국제사회의 정식 권고를 무시하여 아직까지 지속되고 있는 것이다.

5. 이 '법정'은 살아남은 피해자의 소리가 이러한 불이행으로 침묵 당하는 것을 허락하면 안되며, 이러한 인도에 관한 죄에 대한 책임을 애매하게 해서는 안된다는 확신에서 생긴 것이다. 이 '법정'은 여성에 대한 범죄, 특히 성적 범죄를 왜소화하고, 면책하고, 주변화하고, 불명확하게 하는 지금까지의 역사의 경향을 바로잡기 위해서 설치되었다. 이러한 경향은 그것이 백인이 아닌 여성에 대해 행해진 범죄인 경우에 보다 현저했다. 또한 이 '법정'은 용감하지만 고통을 당하고 있는 피해자들이 그 인생의 중국에 서서 몇 번이나 되풀이하여 표명해 왔듯이, 여성들에게 범한 범죄의 책임을 인정하고 해당 책임자를 처벌하는 것이 남겨진 세월을 그녀들이 평안히 지내기 위해서 필요하다는 강한 확신에서 설치된 것이다. 거기에 잇는 것은 이러한 잔학행위가 두번 다시 일어나지 않기 위한 희망과 기대인 것이다. 이 '법정'은 죄는 개인에게 돌아가는 것이지 집단에게 돌아가는 것은 아니라는 중요한 원칙에서 벗어나는 의

도를 가지는 것은 아니다.

6. 이 '법정'은 지구시민사회의 소리로 만들어진 '민중법정'이다. 이 법정의 권위는 국가나 정부간 조직으로 생기는 것이 아니라 아태지역의, 그리고 바로 일본이 국제법 아래서 설명 책임을 지고있는 세계 사람들에게서 유래하는 것이다. 이 법정에는 적정법 수속의 보증이 결여되어 있다는 사람도 있을 것이다. 이 법정은 적정법 수속은 보증할 수 없으며, 또한 그럴 의도도 없다. 이 법정은 국가가 남긴 국제법위반의 문제에 파고드는 것이며, 국가의 대역을 하려는 의도는 없다. 이 법정의 힘은 많은 인권활동이 그렇듯이, 증거를 검증하고 역사에 남는 기록을 만들어 낼 능력에 있는 것이다. 그렇게 함으로서 최대의 수치란 법적 책임을 충분히 인정하지 않고 보상구제조치를 취하지 않는다는 것을 일본정부가 깨닫게 하려는 것이다.

7. 이 민중법정은 한국, 일본, 필리핀의 대표를 장으로 하는 국제실행위원회에 의하여 생겼다. 이 세 사람은 각기 1991년부터 피해자들이 자기의 경험을 이야기하고 그 목소리가 사람들에게 미치도록 아낌없는 지원을 하며 정력적으로 활동해 왔다. 그녀들의 목적은 '복수가 아니라 정의'이며 '생존자들을 위해서만이 아니라, 죽은 사람들을 위해서, 그리고 다음에 올 세대를 위해서'이다. 본 법정은 2000년12월8일부터 12일까지 도쿄에서 개최되었다.

8. 국제실행위원회와 검사들이 '법정헌장'을 기초하고 재판관들이 승인했다. 제2조는 인도에 대한 죄에 재판관할권이 있다고 규정하고 그 죄로는 성노예제, 강간, 기타의 형태의 성폭력, 노예화, 고문, 강제이송, 박해, 살해 섬멸을 포함하지만 거기에는 한정되지 않는다고 규정하고 있다. 제14조에서 헌장은 제출된 증거에 기초하여 각 피고인이 유죄로 인정되든지 유죄로 인정되지 않든지, 혹은 그러한 판결을 내리기에 증거불충분한지를 분명하게 밝힐 의무를 표명하고 있다.

9. 이 법정에서 행해진 발표나 기소장은 동티모르, 인도네시아, 일본, 말레이시아, 네델란드, 남북조선(공동제출), 중화인민공화국, 필리핀, 그리고 대만의 법률가인 각국 검사들이 인솔하는 입장을 넘은, 집단적 협력으로 준비된 것이다. 각국 검사들은 독자적으로 혹은 공동으로 2년 이상 걸친 노력을 거쳐, 이 법정을 결실로 가져왔다. 이들 각국 검사들에게 작년부터 2명의 수석검사가 가세하고 그 참가로 이 준비과정에 국제사회의 관심과 기여가 맡겨지게 된 것이다. 수석검사가 종합기소장을 제출하고 여기에는 각국 검사단도 참여했다.

10. 이 법정은 천왕 히로히토를 포함하는 일본정부와 일본군 고관들에 대해서 인도에 관한 죄로서의 강간과 성노예제에 불법이 있는지 여부를 결정할 것이 요구되고

있다. 피고인 몇명도 성노예제라는 사태에서 생긴 죄상을 과거에 한번도 물어진 적이 없다는 사실을 강조하는 것은 중요하다. 그 점에서 이 법정은 극동국제군사법정, 즉 당초의 '도쿄재판'이 행하지 않았던 것을 이행하기 위해서 열리고 있다. 따라서 이 법정은 당시 적용 가능했던 법을 적용하고, 피고인을 재판하고, 관련되는 '도쿄재판'의 법률과 사실의 인정을 확립된 것으로서 채용한다.

11. '2000년 일본군 성노예전범 여성국제법정 헌장'은 나아가서 국제적 불법행위에서 생기는 국가책임의 불이행에 대한 재판관할권도 정하고 있다. 이리하여 이 법정은 개인의 형사책임과 국가책임을 특수하게 결부시키고 있다. 제4조에 의하면 국제적 불법행위에는 이들 범죄에 대한 진실을 은폐하거나 규명하는 것을 게을리 하는 것, 기소나 보상을 게을리 하는 것, 개개인의 고결함, 복리, 존엄을 지킬 수단을 강구하지 않는 것, 차별, 재발을 방지하기 위해 필요한 조치를 강구하지 않는 것이 포함된다.

12. 제14조는 이 법정이 사죄, 원상회복, 손해배상, 재활 등, 피해자에 대한 구제조치를 취하도록 피고 개인이나 국가에 의한 책임에 대해 권고할 권한을 주고 있다.

13. 일본정부는 2000년 11월 9일자로 이 법정에 대한 통지서를 받고 방청과 참가의 초대를 받았으나 초대에 응하지 않았다. 그러나 본 법정에서는 법정조언자(아미카스 큐리에)로서의 일본인변호사의 변론을 청취하고 일본정부가 지금까지 취했던 입장에 대해 기타의 자료도 검토했다.

14. 이 법정에는 64명의 피해자들이 참가하여 자기들만을 위해서가 아니라 헤아릴 수 없이 많은 죽은 혹은 아직도 침묵의 삶을 강요당하고 있는 소녀나 여성들을 위해서 정의를 요구하고 있다. 많은 피해자가 스스로 증언하고 나아가서 많은 여성들이 비디오나 선서진술서를 통하여 증언을 했다. 우리가 들은 것은 상상을 넘는 가장 잔혹한 행위에 대한 증언이었고, 인간이 어떻게 이렇게도 비인간적으로 될 수 있는가 하는 의문을 갖지 않을 수 없었다. 생존자들의 증언에 더하여 이 법정에서는 역사가, 법률 기타의 전문가, 나아가서는 이러한 잔학 행위에 참가했던 두명의 일본군 병사의 증언도 들었다. 이 법정에서는 회고록이나 한정된 수이기는 하지만 정부측 공식 문서 등 증거문서도 받았다. 이러한 서류는 일본군에 의한 항복후의 서류파괴를 면하고 일본정부나 연합국정부에 의하여 임의로 공개된 것이다. 이 법정은 응변으로 증언을 행한 생존자들의 용기와 존엄을 존중함과 동시에 포괄적이며 유효하며 질서 잡힌 방법으로 증거제출을 행한 검사단의 훌륭한 노력에 경의를 표한다. 또한 이 법정은 전 일본군병사들의 증언의 의지와 성실함에 감사한다.

15. 재판관들은 심리가 원활히, 그리고 효율성 있게 운영되도록 노력한 국제실행위원회, 서기관을 비롯하여 모든 법정담당자에게 감사한다.

16. 각 재판관은 사람들의 집단적 의지와 시민사회에 있어서의 법의 지배의 근본적 역할에 대한 깊은 존경으로 이 법정에 참가하고 있다. 이 민중법정은 국제법과 국내법의 요지는 법적 설명에 대한 책임이 있다는 것, 국제법의 확립된 규범을 침해하는 정책이나 행동에 대해서 개인이나 국가의 책임을 묻는 데 있다는 확신에서 있다. 이러한 행위를 간과하는 것은 그 재발을 가져오고, 불처벌의 문화를 유지하는 것이 된다. 이 원칙은 특히 성폭력, 젠더폭력이라는 범죄에 대한 책임의 문제에 해당된다.

17. 여성에 대한 성폭력에는 전파성이 있으며 전쟁시 그 빈도와 잔학성이 증가한다. 법정의 심리가 분명히 했던 것은 소녀나 여성에 대한 성노예의 제도화가 일본군의 군사행동의 필요불가결의 일부분을 이루고 있었다는 것이다. 이 10년간 구 유고슬라비아나 르완다 국제전범법정에서 성폭력 범죄가 인정되고 기소되는 눈부신 진보를 가져왔다. 이 법정은 불처벌을 종결시키고, 여성의 신체적 일체성이나 인격의 존엄, 바로 그녀들의 인간성 그 자체를 무시하는 풍조를 역전시키기 위한 진일보인 것이다.

18. 증언을 통하여 일관되게 말해진 것은 성폭력 피해자인 여성들의 고통이 자기의 고향으로 돌아갔을 때 사람들에게서 거부당함으로써 더 한층 비참해졌다는 것이었다. 그 비극의 책임이 그녀들 자신에게 있다고 보는 성차별적인 태도의 결과, 치욕으로 고통받고, 침묵을 강요당한 것이다. 이 법정이 인정한 사실은 책임이 사실은 어디에 있는지를 명확하게 인식하는데 공헌하고, 아직도 세계에서 지배적인 성에 관한 고정관념을 바꾸는데 도움이 될 것이다.

19. 이하에 기술하는 것은 재판중 이 법정이 청취하고 수리한 증거에 기초한 사실과 법적 인정의 요지이다. 판결은 2001년 3월 8일 세계여성의 날에 공포될 것이다.

예비적 사실인정

《위안부제도》

20. 최초의 군‘위안소’¹¹⁰⁾는 1932년 일본 침략 후 상해에 설치되었다. ‘위안소’제도

110) 문서로 확인된 최초의 것. 상해파견군참모부장 岡村寧次의 회상록.

의 구조화는 남경에서의 수많은 학살, 강간, 약탈 등 ‘남경대강간’으로서 알려지고 있는 잔학 행위의 발생에 대한 일본정부의 대응책으로서 행해졌다. 그 결과, 일본병사가 있는 모든 곳에서 일본군에게 성적 ‘봉사’를 제공하는 것을 여성들에게 강요하기 위해서, 그 밖의 다양한 성노예제 시설, 또한 복잡한 인신매매 네트워크가 만들어졌다. 이러한 시설을 위해 여성을 징집하고 확보하는 것은 전략의 불가결의 일부이며, 점령지역에서의 시설 밖에서의 강간을 감소하고 그것으로 지역주민의 항일운동을 억제하고 일본의 국제적 악평을 회피하고, 또한 일본군 병사를 성병으로부터 지키는 목적이 있었던 것이 명백하다. 여성과 소녀들은 강제 또는 강요당했고 흔히 사기적인 감언으로 ‘징집’되어 이러한 시설에 수용되었다. 당국에 의한 또한 당국의 용인에 의한 징집으로 표적이 된 것은 가장 가난한 계층의 여성들이었다.

21. 여성들의 노예화에는 반복적 강간, 신체손상 기타의 강간이 포함되었다. 여성들은 불충분한 식량, 물, 위생시설이나 환기의 부족 등 비인도적 환경으로 고통받았다. 그 상황은 처참한 것이었다. 쥐나 이, 전염병, 오물에 둘러싸인 환경에서 생활했음을 여성들은 증언하고 있다. 구타, 심리적 고문, 고립 등 학대는 일상다반사였다. 강간의 결과로서의 임신, 강제중절, 임신능력의 상실은 많은 ‘위안부’가 체험한 고통이다. 여성들을 약화시키는 이러한 상상을 넘은 처우와 일본정부가 자국이 행한 이러한 범죄를 인정하고 손해배상 그밖의 방법으로 보상하지 않았던 결과, 용기있는 여성들의 대부분을 극히 최근까지 수치와 고립과 빈곤과 잔혹한 고통의 생활에 몰아넣어 온 것이다.

법적 인정

《인도에 대한 죄》

22. 검사단은 천황히로 히토 그 밖의 일본군 정부고관을 제2차대전 중 일본군이 정복한 아시아태평양지역 국가들의 여성들의 강간과 성노예를 시인하고, 묵인하고, 방하지 않았던 책임에 대하여 인도에 관한 죄로 기소하고 있다. 검사단에 의한 방대한 증거문서 및 증인의 증언의 수리에서 예비적 사실인정 발표까지의 시간이 짧은 관계로, 판사는 중핵의 피고인, 천황 히로히토의 강간과 ‘위안부’라 불리우는 일본군 성노예제의 제도에 대한 책임의 평가에 초점을 두기로 했다. 그밖의 피고인에 대해서는 2001년3월8일에 발표예정의 최종판결까지 인정의 발표를 연기한다. 우리가 이것을 정의의 정신에 근거하여 행함을 피해여성, 검사, 또한 아태지역의 사람들이 이해할 것이라 믿는다.

23. 그러므로 우리는 1945년 당시의 법과 검사단이 제출한 증거물이나 주장한 것,

나아가서, 말로 표현할 수 없는 이 폭력이 1945년 당시의 법으로는 범죄로 간주되지 않았다고 하는 일본정부의 주장을 자세히 검토했다. 우리들의 인정으로는 인도에 관한 죄 - 침해행위 중에서 가장 심한 것 중의 하나 - 는 전후의 각 법정에서 기소되어야 하는 것이었으며 또한 현재 적절하게 기소되어야 할 것이었다. 나아가서 우리의 인정으로는 강간과 성노예제는 광범위, 조직적, 또는 대규모로 행해졌을 때는 인도에 관한 죄를 구성한다. 1945년까지 강간과 노예화의 양편이 국제법 아래 극악한 범죄로 오랫동안 인정받고 있었다. 성노예제는 새로 범죄로 제정된 것이 아니라, 오히려 노예화의 특별히 잔학한 침략적이며 파괴적인 형태이다. 노예화란 '인간에 대하여 소유권에 수반하는 권리의 일부 또는 전부를 행사하는' 일이라고 정의되고 있다. 노예화에는 강제적 또는 사기에 의한 이송, 강제노동 그밖에 인간을 소유물로서 취급하는 것이 포함된다. '위안부'들을 군수 '물자'의 일부로 징발한 것은 오늘날 세계에서 널리 볼 수 있는 여성차별 인종차별적 태도에 근거한 성노예제가 주로 아태지역의 가난한 비 일본인 여성을 향하여 전례가 없는 규모로 제도화되었음을 제시하고 있다.

24. 이 법정에 제출된 증거의 검토에 근거하여 판사는 천황 히로히토를 인도에 관한 죄에 대해 형사책임이 있다고 인정한다. 원래 천황 히로히토는 육해군의 대원수이며, 자신의 지휘하에 있는 자가 국제법에 따라 성폭력을 하지 않도록 할 책임과 권력을 가지고 있었다. 천황 히로히토는 단순한 괴뢰가 아니며, 오히려 전쟁의 확대에 따라 최종적으로 의사결정 하는 권한을 행사했다. 나아가서 판사의 인정으로는 천황 히로히토는 자신의 군대가 '남경대강간'중에 강간 등의 성폭력을 포함하는 잔학 행위를 범하고 있음을 인식하고 있었다. 이 행위가 국제적 악평을 초래하고, 또한 정복된 사람들을 진압하려는 그의 목적을 방해하고 있었기 때문이다. 강간을 방지하기 위해서 필요한 실질적인 제재, 수사나 처벌 등 모든 수단을 취하는 것이 아니라, 오히려 '위안소'제도의 계속적 확대를 통하여 강간과 성노예제를 영속시키고 은폐하는 방대한 노력을 고의적으로 승인하고 또한 적어도 부주의로 허가한 것이다. 나아가서 우리가 인정하는 바로는 천황은 이런 정도의 규모의 제도는 자연히 생기는 것이 아님을 알고 있었고, 또는 알아야 했었던 것이다.

국가책임

25. 일반적 국제법 아래서는 국가는 국가의 행위에 기인하며, 타자의 정당한 이익을 해치는 모든 불법행위에 대해서 국제법적 책임이 있다. 국가가 국제적 불법행위를 범한다는 것은 국제법의 적용 가능한 규범에 위반하는 행위를 하는 것을 말한다. 일본국가는 조약에 근거한 책무와 국제관습법에 근거한 책무, 양편에 위반하는 행위를 해왔다. 어떤 행위가 국가의 국제적 책무에 위반되는 행위인 경우, 국내법으로는

합법으로 인정되어도 그것으로 국제법 아래서도 합법이라고 인정되는 것은 아니다.

26. 국가의 기관 또는 대리인에 의한 행위는 국제법으로는 그 국가의 행위로 간주된다. 그 기관이 선거인, 입법, 행정, 사법 기타 어느 권력에 소속하는 것인지, 그 기관의 기능이 국제적인 성질의 것인지, 국가기구 중에서 그것이 상부기관인지 하부기관지에 대해서는 아무런 관계가 없다. 군대는 국가의 기관이다. 국가는 자국 영역 내에서 행해지는 불법행위나 부작위만이 아니라 자기의 기관, 대리인, 관료, 피고용인 등이 자국 영토 외에서의 불법행위에 대해서도 책임을 진다.

27. 일본이 위반한 조약상의 책무에는 1907년의 '육상전의 법규관례에 대한' 헤이그조약, 1921년의 '여성과 아동의 매매금지에 대한 국제조약', 1930년의 ILO '강제노동금지조약' 등이 있다. 일본은 또한 국제관습법의 규범도 위반하고 있으며, 1907년의 헤이그조약이나 1926년의 노예조약에서 표현된 국제관례법의 규범에 대한 위반이 포함된다¹¹¹⁾. 나아가서 1951년의 샌프란시스코강화조약에서 일본은 극동국제군사법정(도교재판)의 판결들을 받아들인 것이다.

28. 일본국가가 제2차대전 종결 시 '위안부'를 각 국가로 귀환시키는 일을 게을리했던 것은 헤이그조약¹¹²⁾의 직접적 위반에 해당한다.

29. 제2차대전후 일본은 많은 조약에 서명했다. 여기에는 샌프란시스코강화조약, 일본 네델란드협정, 일본필리핀 배상협정, '일본국과 대한민국 간의 기본관계에 대한 조약', '재산 및 청구권에 관한 문제의 해결 및 경제협력에 대한 일본국과 대한민국 사이의 협정' 등이 있다. 이 법정은 이들 평화조약은 '위안부'문제에는 적용되지 않음을 인정한다. 조약으로서도 개개 국가가 인도에 관한 죄에 대한 다른 국가의 책임을 면할 수는 없기 때문이다.

30. 본 법정은 모든 평화조약에는 본질적인 젠더 편향이 존재한다는 수석검사의 주장은 납득되는 것임을 인정한다. 본 법정은 개인으로든 집단으로든, 모든 평화조약 체결시 여성이 남성과 평등한 발언권도 지위도 가지지 않았던 점에 유의한다. 바로 그 때문에 평화조약 체결시, 군의 성노예제와 강간의 문제는 아무런 대응도 없이 방치되었고 조약의 교섭이나 최종적 합의에 아무런 역할도 없었던 것이다. 본 법정은 국제적인 평화교섭과정이 이렇게 젠더 인식을 결여한 채 행해지는 것은 무력분쟁 하에서 여성에 대한 범죄가 처벌되지 않는다는, 지금도 지속되는 불처벌의 문화를 조

111) 이 조약에 일본은 가맹하지 않았으나 이 조약은 당시의 국제관례법으로 확립된 규범을 명문화한 것이다. 국제관례법의 규범은 조약의 가맹 여부와 상관없이 모든 국가에 적용된다.

112) 전술한 헤이그육상전조약(1907) 부대규칙. 이 두개를 합하여 '헤이그육상전법규'라고 칭하는 경우가 많다.

장하는 것이라고 인식한다.

보 상

“병사들을 상기하면 지금도 떨린다. 그들은 우리 앞에 무릎을 꿇고 제발 용서해 달라고 간청해야 한다. 몇번이고 몇번이고 사죄해야 한다”(조선반도의 피해자).

31. 피해자들의 증언은 일본정부가 자기의 기본적인 법적 책임을 실행하는 일을 게을리했던 것이 여성들을 얼마나 지속적으로 고통스럽게 했는지, 비밀을 지키는 것과 자기를 수치스럽게 여기는 감각을 얼마나 여성들에게 지속적으로 강요해 왔는지를 명백히 했다. 일본정부가 50년 이상 걸쳐서 보상은 '적절하게, 효과적, 신속해야 한다'는 원칙을 침해해 온데 대해 우리는 주목한다.

32. 일본정부가 배상을 행할 책임을 검증하는데 있어, 우리는 옛날부터 국제법의 원칙이 되어왔던 “국가는 자기가 범한 국제법적 위법행위에 대해 구제조치를 제공해야 한다”는 점에 주목한다. 국가의 책임이란 손해배상, 원상회복, 사회복귀, 만족과 재발방지의 보증을 제공하는데 있다. 배상에는 상기의 사항 중에서 개별적 상황에 따라 그 어느 것인지, 혹은 모든 형태의 것을 포함하며 피해자가 받은 모든 피해에 대응하는 것이어야 한다.

33. 지금까지 역대 일본정부는 오늘에 이르기까지 그 불법행위를 인정하는 의무를 지속적으로 위반하고 있다. 검사단과 피해증인들은 의미있는 사죄의 중요성을 강조했다. 즉 불법행위를 충분히 인정하고 법적 책임을 명확하게 받아드린 후의 사죄이다. 그러나 우리는 일본정부의 공식입장이 당초의 죄상을 명백히 할 문서의 피기부터 침묵으로, 군의 관여를 부인하는 명백한 허위의 주장, 국제적 책무에 따르지 않는 부분적 '사죄'에로 변천해 왔다고 인정한다. 일본국가가 불법행위를 충분히 인정하는데 의도적으로 저항하고 있는 것이 수치와 침묵을 지속시키고, 생존자들에게 말할 수 없는 고통을 주고, 그녀들이 마음 편히 살 가능성을 지속적으로 빼앗아 왔다.

34. 불법행위를 불법행위로서 인정하는 책무가 있음과 동시에 적절한 공적 역사기록을 작성하고 미래의 세대에 이러한 잔학행위가 두 번 다시 되풀이되지 않도록 할 필요가 있다. 본 법정의 인정에서는 일본정부는 현재의 일본인이나 미래세대를 교육하려는 노력이 전혀 보이지 않는다.

35. 피해자들과 상담하면서 적극적인 수단을 취하며 여성들의 존엄이 회복되고 있다는 것을 사회가 볼 수 있도록 할 의무가 일본정부에게 있다. 나아가서 필요한 것

은 당시 폭력과 노예화로부터 지금에 이르는 침해행위의 결과로 생긴 물리적 심리적 “경제적으로 산정가능한 모든 손해”에 대해서 일본정부가 손해배상을 행해야 한다. 국제법 하에서는 손해배상은 정부가 행해야 하며, 물질적인 피해, 상실된 기회, 피해자 본인이나 가족 친지들이 입은 고통등을 적절히 참고하는 것이어야 한다. 법정의 인정으로는 아시아여성기금은 증언한 여성들 거의 모두에 의하여 격렬히 거부당하고 있으며 그러한 기준을 채우는 것이 아니다.

36. 법정의 인정에서는 배상이 지연된 것이 여성들에게 수치와 분노와 비애와 고립과 경제적 곤궁과 빈곤, 건강문제, 평안을 얻을 수 없는 일등의 괴로움을 지속적으로 강요해 왔다. 이러한 심각한 피해도 또한 손해배상의 대상이다.

37. 재활을 위한 의료와 심리적 돌봄이 필요하다. 또한 법적인 사회적 봉사도 필요하다.

결 론

38. 심리를 통하여 본 법정에 제출된 방대한 증거문서를 검토하고 또한 이들 범죄가 범해진 시점에서 적용가능한 법의 검토를 한 후에 법정은 사실인정의 개요를 발표했다. 최종판결은 2001년 3월 8일에 발표된다.

39. 법정은 제출된 증거에 기초하여 검사단이 피고인 천황 히로히토에 대해 입증한 것을 인정하며, 천황 히로히토는 공통기소장 중 인도에 대한 죄의 소인(訴因)1과 2인 강간과 성노예제에 대한 책임으로 유죄로 인정한다. 또한 인도에 대한 죄의 소인3의 강간에 대해서도 유죄이다. 나아가서 판사는 일본정부가 '법정헌장' 제4조가 말하는 의미로 '위안소'제도의 설치와 운영에 대해 국가책임을 진다고 판정한다.

40. 기타 피고인에 대해서는 판사는 현 단계에서 형사책임에 대해 인정하기 위해 본 법정에 제출된 방대한 증거를 소화하는데 충분한 시간을 가지지 못했다. 따라서 그들 피고인의 개인으로서의 또한 상관으로서의 책임에 대해서는 최종판결 시에 판결하는 것으로 한다.

권 고

《일본정부에 대하여》

1. 완전하고 성실한 사죄를 행할 것. '위안부'에게 용서를 빌고 법적 책임을 인정하고 두 번 다시 되풀이하지 않을 것을 보장할 것.

2. 법적 조치를 취하고 생존자에게 보상할 것. 그 금액은 가해행위 별로 적절할 것.
3. 적절한 정보를 낼 것.
4. 인적 자원과 기구를 운영하며 조사를 할 것.
5. 생존자의 존엄을 회복하고 도서관 박물관, 추도비를 세울 것.
6. 공식 비공식적 교육제도를 확립할 것. 교과서에 기술할 것. 장학금을 보장하고 젊은이에게 불법행위의 사실을 전할 것.
7. 성의 평등성을 확립할 것.

《전 연합국에 대하여》

8. 도쿄극동재판에서 쇼와 천황이 기소되지 않았던 이유를 설명하고 모든 문서를 공개할 것.

《유엔에게》

9. 필요한 정책을 강구하고 일본정부가 보상하도록 권고할 것.

약식 판결문(동경) · 영어

Before the
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
EMPIROR 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 and 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 Cu, Taiwan

I was a virgin. Ten men raped me. One got off and another replaced him. They treated

us like animals. Blood come 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 right advocates and scholars worldwide have mobilized to seek justice. In this way, these women have contributed to the emergence of 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 pact 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 silent the voices of 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 Peoples' 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 Peoples' 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 experience 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 person and still more gave testimony through videotapes and affidavits. We heard testimony of some of the cruelest treatment imaginable, giving rise to 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 Register 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 Peoples' Tribunal acts from the conviction that the cornerstone of the international and domestic rule of law is legal accountability – the calling into account of individuals and states for policies and activities that violate 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.