

## **How to end impunity for wartime sexual violence?**

### **—The meaning of Women’s International War Crimes Tribunal 2000 on Japan’s Military Sexual Slavery—**

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“This is a People’s Tribunal, a Tribunal conceived and established 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.”

“This People’s Tribunal acts out of the conviction that the cornerstone of the international and domestic rule of law is legal accountability—the calling to account of individuals and states for policies and activities that grossly violate established norms of international law. To ignore such conduct is to invite its repetition and sustain a culture of impunity.”

“The People’s Tribunal is another step towards ending impunity and reversing the blatant disregard of the bodily integrity, inherent dignity, and, indeed, the very humanity of women.”

—Judgement of the Women’s International War Crimes Tribunal delivered on  
December 4, 2001 in the Hague

#### ◇The 21<sup>st</sup> century full war and violence

The 21<sup>st</sup> century was expected to be a century free of war and violence by people of the world, because they were agonized by the 20<sup>th</sup> century full of war and violence. However, our hope for the new century was shattered in the first year when terrorists’ attack ruined thousands lives in the United States and President Bush who viewed it as war, not as an international crime, launched a global war against terrorism by bombing Afghanistan, causing thousands deaths of innocent Afghan civilians and expanding its military action in many other parts of the world. He declared 2002 as “the year of war”.

Global military policy of the US, with the world largest military budget of 300 billion US dollar and technically most advanced massive destructive weapons, in the name of eradicating terrorism has been supported and cooperated by most of the states, not only of the

West including Japan but also other big powers, Russia and China. Globalization of market economy is now accompanied or sustained by global militarisation.

However, it is women of many parts of the world who have raised the strong voice against such dangerous global trend toward militarism since right after the September 11 and the Afghan war. To circulate their voices which main stream media hardly report, we, Japanese women published a book; “Women’s Anti-war Voices Circulating Globally—Toward the 21<sup>st</sup> Century Without War and Terrorism”.

#### ◇”Comfort Women” broke silence in the 1990s

Women have been always victimized by sexual violence in war and armed conflicts for centuries; historically, it used to be considered normal for women to be raped or enslaved for sexual service for the military as a part of war and even international law viewed rape of women during war as damage of honor of the group which the victimized women belong to, not as crime or human rights violation against women themselves. In addition, in patriarchal society which values virginity and chastity most, women who were victimized by sexual violence used to be blamed and stigmatized, as a result, silenced. Thus, perpetrators who committed sexual violence against women in war or under armed conflicts were hardly prosecuted and punished.

However, such silence was finally broken by “comfort women”, survivors of Japan’s Military Sexual Slavery before and during World War II in the Asia-Pacific region in the early 1990s; first Korean survivors began to come out and speak of their painful stories after nearly a half century’s silence with courage and strength, followed by survivors in most Asian countries.

They have demanded the Japanese government the recognition of the crime against them, official apology, state reparation and prosecution of perpetrators; the Japanese government, however, has still refused to admit its legal responsibility until today; even though, in the beginning, it denied even involvement of the state and the military in the sexual slavery and then, in 1993, reluctantly admitted only its moral responsibility.

#### ◇Women’s movement campaigns on wartime sexual violence

Around the same time, mass rape during the civil war in former Yugoslavia shocked the whole world. Those women victimized by both wartime sexual violence: survivors of Japan’s sexual slavery of more than a half century ago in Asia and those of mass rape in the current armed conflict in Europe met at the UN World Human Rights Conference in Vienna in 1993 and made jointly a strong appeal on wartime sexual violence to the whole world.

Responding to such voices, global women’s movement launched a campaign on war crimes against women, asking for justice for victims and measures to prevent repetition of such crimes.

The growing demand to end the cycle of impunity for wartime sexual violence voiced by both survivors and women's movement had visible impact on the International Criminal Tribunals for former Yugoslavia and Rwanda established by the UN Security Council in the early 90s; sexual violence was prosecuted at both Tribunals for the first time and a number of perpetrators have got severe sentence including life imprisonment.

Further, the world opinion to demand accountability for grave human rights violation by state leaders or other individuals in power grew so rapidly that the Statute of the International Criminal Court was adopted at the Rome conference by more than 100 countries. The well organized lobbying campaign by women's groups succeeded in putting gender perspective into the Statute; for example, war crimes against women and crimes against humanity toward women were clearly mentioned. Thus, wartime sexual violence is now considered as war crimes or crimes against humanity to be punished.

#### ◇Survivors' cry for justice

In the meantime, aged "comfort women" began to die one by one in Asian countries without getting justice or accountability by the Japanese government. Even worse, since mid 90s, growing right wing revisionist forces in Japan started an intentional propaganda campaign to deny the existence of "comfort women" system, claiming "comfort women" were just voluntary prostitutes who wanted to make money by providing sexual service to the military. Even some ministers and high rank officials made similar insulting comments, which meant a sort of "second rape" to aging and ailing survivors.

Under such situation, one Korean "comfort woman" Ms Kang Duk-Kyong passed away in 1997, leaving a powerful painting "Punish perpetrators!". Looking at this painting, Japanese women of a perpetrating country were shocked and questioned how to respond to her cry for justice. Women's International War Crimes Tribunal was the answer.

#### ◇A taboo for prosecution of war criminals in postwar Japan

In the whole post-war period, it has been a taboo to punish any war criminal in Japan; the International Military Tribunal for the Far East(Tokyo Trial) held by the Allied Powers did not prosecute Emperor due to mainly the political reasons of the US; thus, all Japanese military men could use it as an excuse that they should not be held responsible since they had acted totally by Emperor's order during war.

In contrast with Germany, after the post war military tribunals, Japan itself has not punished any war criminal; furthermore, one of the class A criminals later became prime minister and all war dead including Class A war criminals who were executed have been enshrined in the Yasukuni Shrine as war gods and the prime minister visited to pay tribute in

violation of Constitution, defying strong protest by Koreans and Chinese.

Japanese courts have dismissed any claim of civil lawsuits filed by “comfort women” of various countries demanding the Japanese government apology and reparation, just following the arguments of the Japanese government.

It should be noted that Japan has not prosecuted any kind of war crime; however, among them, as far as war crimes against women are concerned, all other governments didn’t prosecute either. In fact, the Tokyo trial didn’t prosecute such heinous crime as military sexual slavery even though Allied military leaders did know about it. Therefore, impunity of war crimes against women was a universal problem which, as survivors demand, had to be addressed by all states.

Therefore, Japan’s military sexual slavery should be considered not only as an unsolved war responsibility issue of Japan but also as a future looking impunity issue of all states.

#### ◇ Two objectives; Japan’s war responsibility and ending impunity

In reality, it is impossible to expect Japanese courts to prosecute military sexual slavery, neither intergovernmental organization such as UN to establish any international tribunal on this crime committed by Japan more than a half century ago. Since it is hard to expect any state to address the issue of justice for “comfort women”, VAWW-NET Japan, which had just been formed in early 1998 for the purpose of addressing the issues of Japan’s military sexual slavery, US military sexual violence around the US bases and violence against women under current armed conflicts in the world, proposed to hold a people’s tribunal in Tokyo, following the example of Russell Tribunal during Vietnam War.

Women’s Tribunal had two objectives: firstly to establish individual criminal responsibility and state responsibility for military sexual slavery and other sexual violence committed in the past in order to pressurize Japan to take legal responsibility and secondly to address the issue of universal concern of ending impunity of wartime sexual violence and to urge all states to take measures to prevent its repetition in future.

#### ◇ From Tribunal in Tokyo to the Hague judgment

The Tribunal was held on December 8-12, 2000 in Tokyo and the final judgement was delivered on December 4, 2001 in the Hague. Nearly four years’ process of the Tribunal promoted by women of not only perpetrating and victimized countries but also of women who are actively involved in the issue of violence against women in armed conflict demonstrated an example of how global women’s solidarity could rewrite and make history toward the world of non-violence.

The Tribunal was established by the International Organizing Committee which consisted of three parties: Japan, six victimized countries (later nine countries) and International Advisory Committee (human rights activists and experts). The IOC and country prosecutors’

teams drafted the Charter which determined jurisdiction and procedure of the Tribunal. Each prosecutors' team collected testimonies and evidences in each country and prepare country indictment to be presented at the Tribunal. Based on them, two chief prosecutors (Ms Patricia Viseur Sellers is Legal Advisor on Gender Crime for former Yugoslavia and Rwanda and Ms Ustinia Dolgopol, expert on international law) submitted Common Indictment(individual criminal responsibility) which prosecuted former Emperor Hirohito and other nine leaders of the Japanese government and the military and also the Application for Restitution and Reparation(state responsibility).

#### ◇Emperor found guilty for a crime against humanity

The Tribunal in Tokyo was held for four days: three days for proceedings and one day for preliminary judgement; each day more than one thousand participants gathered from both overseas and Japan to hear the proceedings and to watch sixty four survivors from eight countries, the largest number of survivors ever got together. Testimonies of more than twenty survivors exposed cruelty of military sexual slavery and its continuing harm tormenting them until today. Testimonies of former Japanese soldiers and experts were also shocking.

After one day public hearing on “Crimes against Women in Recent Conflicts” where fifteen survivors of brutal sexual violence from all of the world testified, on the last day, December 12, four judges ( all internationally renowned legal experts including presiding judge, Ms Gabriel Kirk McDonald, former president of the International Criminal Tribunal for former Yugoslavia) delivered “the Summary of Findings”.

They read the conclusion: “the Tribunal found Emperor Hirohito guilty of responsibility for rape and sexual slavery as a crimes against humanity and the judges determine that the government of Japan has incurred state responsibility for its establishment and maintenance of the comfort system”, then the big hall filled with cheers, as the aged survivors, weeping in joy, climbed onto stage one after another to express their gratitude to the judges and embraced each other. It was a historical moment that Emperor's war responsibility was found guilty publicly for the first time after the war and it was a good news for people of Asian countries victimized by Japanese aggressive war.

#### ◇The significant role of a people's tribunal

It took one full year for judges, assisted by four legal advisors, to finish and publish the final judgement on December 4, 2001 in the Hague. After reading the excerpt, four judges handed a copy of voluminous judgement to each of eleven survivors who traveled all the way to Europe to indicate dramatically they were the main actors of the Tribunal. All of them expressed their pride and joy by putting up the copy or embracing it.

The judgement, nearly three hundred pages with 1094 paragraphs, is really the precious fruit of the enormous work of an enormous number of women and men who joined the

process of the Tribunal. It has already received high evaluation from international legal experts and historians of various countries as “an epoch making historical document on gender crime”, “a new classic text of international law” or “product of feminist theory”.

Its contents are comprehensive including the background of the Tribunal, historical factual findings of sexual slavery, application of law, individual criminal responsibility, state reparations and recommendations. There are several important points which can be applied broadly; firstly, the concept of people’s tribunal is defined as extremely significant; it says, ”People’s Tribunals are premised on the understanding that law is an instrument of civil society that does not belong exclusively to governments. Accordingly, where states fail to exercise their obligations to ensure justice, civil society can and should step in.” This Women’s Tribunal demonstrated that people’s tribunal based on people’s sovereignty can play a more important role than ordinary trial or tribunal under state sovereignty. It was also a process that international law should be put into the hands of people from monopoly of state.

#### ◇Gender analysis and global civil society

Secondly, the judgement is seeking for gender justice which was neglected historically; it evaluates that this people’s tribunal is women’s tribunal established by women’s initiative to focus on gender crimes during war. Gender analysis in the judgement is outstanding, for example, it refers to “gender bias underlying the Peace Treaties” in its counter-attack against the arguments of Japan, saying “We note that women did not have an equal voice or equal status to men at the time of the conclusion of the Peace Treaties, with the direct consequence that the issues of military sexual slavery and rape were left unaddressed at that time”. “The Tribunal considers that such gender blindness in international peace processes contributes to the continuing culture of impunity for crimes perpetrated against women in armed conflict.” It means that international law which used to be male oriented should be reformed to be more gender sensitive.

Thirdly, the judgement emphasizes the role and capacity of global civil society transcending nation states in holding this people’s tribunal: it pointed out that ”civil society is not constrained by states boundaries but inspired by common shared values that extend across borders.” In this era of globalization of market economy which actually causes ethnic/religious hostility and conflicts all over the world, it is extremely important to promote globalization of people’s solidarity or global civil society against state power, interests or violence in the form of war or suppression.

#### ◇Recommendations to Japan, former Allies and the UN

The judgement includes seventeen recommendations toward the Japanese government, former Allied nations and the UN and its member states in order to urge the Japanese government to admit state responsibility by acknowledging its legal responsibility, with full

apology and state reparation. There are other recommendations including research, documents, memorial activities, education and return repatriation of survivors, and former Allied nations should declassify all records to explain the reasons why Emperor and “comfort women” system were not prosecuted before the Tokyo Trial. The UN and member states are urged to take necessary steps to ensure the Japanese government pay reparation to survivors.

It is also important that the Tribunal expects all nations to make efforts to respect the judgement and to implement these recommendations.

#### ◇Challenge to the taboo caused rightwing attack

In addition to such relevance of the Tribunal to international community, it had great impact on Japan itself, because its guilty verdict handed down to Emperor Hirohito 55 years after the end of war was a challenge to the greatest taboo of postwar Japan.

Naturally, it faced hostile response in Japan. In contrast to foreign media which gave the guilty verdict for Hirohito extensive coverage, Japanese media largely ignored it because it was afraid of touching the taboo. The Education Channel of NHK TV which planned to produce a documentary program on the Tribunal gave in to the violent pressure from rightwing groups. They demanded that broadcasting be cancelled and more than thirty members of them even burst into the building of NHK. As a result, the program was sabotaged and distorted, its content bearing no resemblance to the program originally planned. VAWW-NET Japan filed a suit against NHK in July 2001 to protest.

This history of failing to prosecute war criminals has given to free rein to the rightwing nationalist group whose members call themselves as “liberal historical view group” and condemn us as “masochistic historical view group”. They have been campaigning successfully to remove description of “comfort women” from history school textbooks, publicly stating: “That would be like writing a history of the structure of toilets”.

The Tribunal was therefore a counter-attack on this growing nationalist force which has been trying to erase the “comfort women” from history. Enormous amount of evidence submitted by prosecutors’ teams of Japan and victimized countries to the Tribunal includes survivors’ testimonies, video recordings, official documents, written statements of experts and memoirs; all these material and the judgement will help future generations to understand the truth of Japan’s military sexual slavery which was one of the largest scale wartime sexual violence in the 20<sup>th</sup> century or even human history. They are the most effective weapon which can be used by survivors and their supporters against rightwing forces that seek to justify the past.

#### ◇ New ministers in Afghanistan unpunished for their crimes

We have to face the harsh reality today: there are many places of conflict in the world where perpetrators of crimes against women have never been prosecuted or punished and live

a normal life or get to posts with power.

For example, in Afghanistan, after collapse of Taliban fundamentalist regime, a new government has been installed under the UN guard; however, according to an Afghan women's group, women are still too frightened to remove Bulka and worried about the future of their country, because many of ministers are leaders of the Northern Alliance under which thousands of thousands people were killed and thousands of thousands of women including 7 year old girl to over 70 year old woman were raped. Women ask; "Where is justice? Why such criminals have never been prosecuted?"

It seems still a long way to end impunity for war crimes against women, especially, sexual violence; however, more survivors now break silence by support of women's movement and take lead in changing history.

◇To honor great fortitude and dignity of survivors

The last paragraph of the judgement of the Tribunal emphasizes the decisive role of survivors. "Through this judgment, this Tribunal intends to honour all the women victimized by Japan's military sexual slavery system. The judges recognize the great fortitude and dignity of the survivors who have toiled to survive and reconstruct their shattered lives and who have faced down fear and shame to tell their stories to the world and testify before us. Many of the women who have come forward to fight for justice have died unsung heroes. While the names inscribed in history's page have been, at best, those of the men who commit the crimes or who prosecute them, rather than the women who suffer them, this judgement bears the names of the survivors who took the stand to tell their stories, and thereby, for four days at least, put wrong on the scaffold and truth on the throne."

( For more details of the Tribunal, see my paper "The Historical Significance of Women's International War Crimes Tribunal 2000—Overcoming the Culture of Impunity for Wartime Sexual Violence" and a video documentary "Breaking History of Silence" produced by VAWW-NET Japan)

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