

Transcript of Oral Judgement delivered on 4 December 2001 by the Judges of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery

INTRODUCTION AND BACKGROUND OF THE PROCEEDINGS

Breaking the History of Silence

1. The Judges will now read an overview of the contents of the judgement.
2. During the proceedings in Tokyo, the seven Prosecutor teams and the two co-Chief Prosecutors offered an impressive amount of evidence, including the testimony of 35 survivors. The full and official judgement which is formally issued today exceeds 240 pages. It is not possible to capture all the experiences recounted by the survivors here today. We wish to emphasize that the text we shall read to you today is not a part of the judgement. The Registry will make the judgement available in due course.
3. In the early 1990s, women broke 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 victimised survivors, euphemistically called "comfort women" came forward to recount how they were conscripted and trafficked through force, coercion, and deception and confined to "comfort stations" or, more accurately, sexual slavery facilities, wherever Japanese troops were situated, including on the front lines.
4. The courage of these survivors has inspired other victims of sexual atrocities to speak out about the crimes committed against them. In an extraordinary way, the former "comfort women" have contributed substantially to the emergence of a larger global movement for women's human rights.

The Proceedings

5. The Women's International War Crimes Tribunal 2000 on Japan's Military Sexual Slavery sat in Tokyo from December 8 until December 10, 2000 and took testimony of survivors, experts, and perpetrators. On December 12, 2000 the Tribunal issued its Preliminary Findings. Over 75 survivors were present at the proceedings of the Tribunal.
6. The Tribunal was established as a result of the failure of states to discharge their responsibility to ensure justice. Initial responsibility for this failure lies with the World War II Allied states which did not prosecute Japanese officials for these crimes before the International Criminal Tribunal for the Far East in the trial held in Tokyo from April 1946 - November 1948, despite the fact that they possessed evidence of the sexual slavery.
7. Nonetheless, primary responsibility lies and remains with the state of Japan for its continuing failure over the last 56 years to prosecute, to officially and fully apologise, and to provide reparations and other meaningful remedies for the crimes.
8. The Judges emphasise that the Japanese people are not on trial in this forum. Individual accountability

for violations of international humanitarian law does not include the ascription of collective guilt. The Tribunal has no intention of deviating from this important principle.

9. This Tribunal was established out of the conviction that the failure to fully redress the crimes committed against the "comfort women" must not be allowed to silence their voices. This is a Peoples' Tribunal, a Tribunal conceived and established by the voices of global civil society. The Women's International War Crimes Tribunal, like other Peoples' Tribunals, is premised on the understanding that "law is an instrument of civil society" that does not belong exclusively to governments whether acting alone or in conjunction with the states.
10. While a Peoples' Tribunal cannot sentence or order reparations, it can make recommendations backed by the weight of its legal findings and its moral force. It is hoped the government of Japan will come to realise that its greatest shame lies not in uncovering the truth about these crimes, but in its failure to accept full legal and moral responsibility for the crimes.

The Common Indictment and the Application Regarding State Responsibility

11. The Prosecutors filed seven Country Indictments and one Common Indictment. In the Common Indictment, the Prosecutors have charged the following accused with crimes against humanity, particularly rape and sexual slavery, under Article 2 of the Charter of the Tribunal: Emperor HIROHITO, MATSUI Iwane, HATA Shunroku, TERAUCHI Hisaichi, ITAGAKI Seishiro, TOJO Hideki, UMEZU Yoshijiro, KOBAYASHI Seizo, and ANDO Rikichi.
12. In Counts 1 and 2 of the Common Indictment, the Prosecutors charge the accused with criminal responsibility for crimes against humanity based on the system of sexual slavery, known as the "comfort women" system, instituted and sustained by the Japanese military. In Count 3 of the Common Indictment, the Prosecutors also charge Emperor HIROHITO and YAMASHITA Tomoyuki with rape as a crime against humanity for the mass rapes inflicted upon the female population of Manila in the Philippines on November 23-24, 1944.
13. In addition to the criminal Indictment, the Prosecutors have submitted an Application for Restitution and Reparations pursuant to Article 4 of the Charter of this Tribunal. In the Application, the Prosecutors assert that the state of Japan incurs international responsibility for the commission of international wrongs and they seek reparations from the state for the harm inflicted on women as a result of these criminal acts and for the continuing harm inflicted because of the failure of Japan to fulfil its duty to prosecute perpetrators and provide reparations.

The Accused

14. The accused in this case held some of the highest level positions in the Japanese government and military during the war.
15. From 1937 until 1945, HIROHITO Emperor Showa was the Head of State of Japan and Supreme Commander of the Armed Forces.
16. ANDO Rikichi was the Commander of the 21st Army and then Commander of the South China Area Army from October 1940. He also served as Commander of the Taiwan Army and Governor General of Taiwan.

17. HATA Shunroku acted in the following capacities at different times: Commander of the Taiwan Army, Commander of the Central China Expeditionary Forces, leader of all Expeditionary Forces in China, and Minister of War
18. ITAGAKI Sheishiro served as the War Minister. He was thus directly responsible to the Emperor. ITAGAKI was appointed to the Chief of Staff to the China Expeditionary Force. Also, he acted as Commander of the Korean Army.
19. As Governor-General of Taiwan and later as Cabinet Minister, KOBAYASHI Seizo reported to the Emperor.
20. MATSUI Iwane was a senior officer in the Japanese Army and had achieved the rank of General. MATSUI held the position of Commander of Shanghai Expeditionary Forces and China Expeditionary Forces. MATSUI was Commander of the Army that invaded Nanking.
21. TERAUCHI Hisaichi was, at various times, the Commander of the North China Area Army and of the Southern Expeditionary Forces in Philippines, Indonesia, Malaysia, Timor, and Burma. He was also Minister of War and later was appointed the Inspector-General of Military Education.
22. TOJO Hideki was Chief of Staff of the Kwantung (Guangdong) Army; and later, the Vice-Minister of War. TOJO also served as Chief of General Staff of the Army, Prime Minister, War Minister, and Head of the Home Ministry.
23. UMEZU Yoshijiro was at various times, the Vice Minister of War, Commander of the 1st Army , Commander of the Kwantung (Guangdong) Army, and Chief of Staff.
24. YAMASHITA Tomoyuki served as Commander General of the 14th Army. In this capacity, he directed and was responsible for Japanese troops operating in the Philippines, including the area of Mapanique.

Notice to Japan and Process for Consideration of Defences

25. The Registry of this Tribunal served the Prime Minister of Japan with notice of these proceedings on November 9, 2000 and November 28, 2000 and provided representatives of the state of Japan with an invitation to participate in the proceedings. The Judges regret the lack of response by the Japanese government to this invitation.

The Tokyo Tribunal as a Continuation of the IMTFE

26. In adjudging the Common Indictment, this Tribunal sits as if it were a continuation of the IMTFE and the subsidiary trials held in the Asia-Pacific which did not charge or adjudicate the responsibility of the Japanese leaders for the "comfort system" or the mass rapes committed in Mapanique. As to those accused who were tried by the post-war Tribunals, this Tribunal will treat these proceedings as an extension of these trials.

FACTUAL FINDINGS

Description of the Evidence Received

27. As mentioned before, thirty-five survivors testified at the proceedings directly or through video interviews. The Judges find each of the witnesses that testified at the proceedings to be credible and we accept

their testimony as reliable and trustworthy. It was evident during their testimony that the survivors remain deeply scarred by their experiences and we consider that their obvious suffering is further evidence of the truthfulness and veracity of their stories.

28. In addition to the testimony of survivors, admissions from former soldiers and officers, admissions by the state of Japan, testimony from experts, reports from the UN Special Rapporteur on Sexual Slavery, and background evidence contained in the IMTFE Judgement, the Judges have also considered select other documents in evidence. We do not attempt to cover all the evidence here today. Instead, we shall mention a small sample of the testimonies heard at the Tribunal last December.

Development and Operation of the "Comfort Women" System

29. We will now discuss our findings regarding the development and operation of the "comfort women" system, based on the evidence presented to us by the Prosecutors. As background to our findings, we have relied on the pertinent findings of the original IMTFE Judgement, in particular, the findings that the Japanese government and military, in their goal to dominate the Asia-Pacific region, consistently engaged in various forms of atrocities in each of the territories they occupied. The abuse of civilians and civilian internees was extensive and pervasive throughout the region, the most common perhaps being murder, torture, rape, forced labour, and confinement in inhumane conditions.

Origins of the "Comfort Women" System

30. The Japanese army set up the first known so-called "comfort station" in China in 1932, consonant with that army's movement into China through Manchuria. The military sexual slavery system became institutionalised in connection with the events leading up to and occurring after the invasion of Nanking in December 1937, which resulted in a conquest so brutal it became known as the "Rape of Nanking." As General MATSUI's troops approached Nanking, they committed murder, torture, rape and other forms of sexual violence on an extraordinary scale.

31. In a cruel paradox, the Rape of Nanking was a significant motivation for the institutionalisation of sexual slavery facilities, facilities which were purportedly intended to be used to replace unrestrained rape of women throughout the city with a system of highly regulated, institutionalised sex facilities.

Institutionalization of the Sexual Slavery System

32. During the war in the Asia-Pacific, the Japanese military continued to establish facilities designed to provide sexual services to its troops. The Japanese government and military established and expanded "comfort stations" into a vast institution for a variety of reasons. According to the evidence before this Tribunal, "comfort stations" were set up firstly to prevent the Japanese troops from contracting sexually transmitted diseases, and secondly to counteract anti-Japanese sentiment produced by the multiple, mass and indiscriminate rapes perpetrated by Japanese soldiers against civilian women as the armies advanced and asserted control over the territories. The evidence evinced another reason for the establishment of the "comfort women" system, namely to "comfort" the soldiers and to provide an escape avenue for their pent-up emotions, tensions, and frustrations resulting from the bleak, harsh, and arbitrary discipline and conditions they had to endure. Another reason emerging from the evidence was to protect against and prevent the likelihood of spying and dissemination of army secrets which might occur if the soldiers visited local brothels. The Japanese army believed that "building its own comfort stations and conducting

regular supervision and surveillance of them was the best policy" to contain army secrets

33. As the Japanese military expanded the sexual slavery system, and sought to get enough women to satisfy their formula of one comfort woman for every one hundred soldiers, it regarded its colonies as a source of girls and women.

34. In Taiwan, the Japanese recruited women by soliciting the aid of a corporation, the Taiwan Colonial Trade Corporation (TCTC), and the local government including the Governor General and the police. Thus the government of Japan and private corporations joined forces to actively participate in and maintain the "comfort system" in China and to procure Taiwanese females for "comfort stations."

35. As the testimony of the Taiwanese survivors specifies, the Japanese military supervised and, in some case was directly involved in, procuring women and girls for the "comfort stations" in China and Taiwan.

36. Lin Shen-Chung was 16 when she was forced to become a "comfort woman". With three others acquaintances with whom she worked at the factory, she was interned by the Japanese in a nearby house without being allowed to go home, on the pretext that Japanese bosses were afraid of them arriving late to work. Lin Shen-Chung testified:

After working nearly three months [in the factory], one day, the deputy captain, Nalida, Gunsho took me to the entrance of a cave, and told me to wait there. A Japanese soldier turned up and asked me to provide sexual service. I firmly resisted. But the Japanese soldier said "since you came to work here, this is part of your work too." He forced me to subject to his sexual request without payment. Everyday, the six of us would be taken to this cave one by one for this, serving as much as five soldiers each night. After each time, we got to rest for half an hour. The six of us were forced to provide sexual service in turns on a bed ten meters from the entrance of the cave...All I can do to such ordeal was to weep everyday.

37. During her ordeal as a comfort woman, she got pregnant three times. She was required to report them to the Japanese army doctor, and each time she was given an abortion. She returned to her community after the Japanese army left.

38. Tens of thousands of Korean women and girls were also forced into the sexual slavery system through such means as deception and force, after which they were subjected to rape and other forms of sexual violence and confined in "comfort" facilities under inhumane conditions. Women and girls from Korea were a major proportion of the "comfort women" were Korean. Witness Kim Gun-ja was one of the Korean women forced to be a "comfort woman".

39. Kim Bok-Dong from Korea, told how in 1941, at age 15, the village headman forced her family to send her away to work in the Volunteer Corps, ordering her mother to put her seal on some documents. She testified that the Japanese took her to Guangdong to a hospital building in an army truck. They put her to work in a "comfort station". She stated:

Fifteen soldiers usually came each day, but on the weekend the number often exceeded fifty. The enlisted soldiers came between noon and 5pm, on Saturdays and from 8am to 5pm, and on Sundays, they had to be gone by 5pm when the military police came to check on the station. Officers arrived after 7pm, many of whom slept there and then left. If my vagina was swollen and it was hard to penetrate, the soldiers put an ointment on the condom and forced themselves in. If I didn't know that my menstruation had started and a soldier saw the blood, he would get angry, and slap my face and hit me.

40. Although the soldiers were supposed to use condoms, most of them did not and thus many comfort

women became pregnant as a result of the repeated rapes. The women who got pregnant were still not allowed to refuse sexual demands.

41. The facts before this Tribunal demonstrate beyond doubt that the women and girls were physically and unlawfully detained or confined. Barbed wire and armed guards were common throughout the different regions. The survivors' testimony establishes that those who attempted to escape and failed were subjected to exceedingly cruel torture and public humiliation upon recapture designed to punish them and deter others from attempting to escape.

42. The survivors' testimony also indicates that in some cases, other physical, psychological, or logistical barriers operated to restrict movement, even when the women were not physically restrained or obstructed from leaving. In many cases, the women had been transported far from their homes. Many sexual slavery facilities were set up in or near war zones. The women often did not speak the local language or had no resources that would enable them to get to safety. The testimony of Song Shin Do of Korea sums up the situation:

Since I didn't know where I was, I didn't speak the language, I had no money and no idea how to take the train, and the area was surrounded with soldiers, escape was impossible. Even so, when the soldiers came into my room, horrifying and terrifying me, I cried and tried to run away. The manager slapped my cheek until my nose bled, withheld my food and shut me up in a narrow room. However, complete escape was impossible, and while crying, I became a tool for the sexual appetites of the soldiers.

43. With the institution of its military regime in the Philippines in 1942, the Japanese army established sexual slavery facilities there. These "comfort" facilities were run by Japanese civilians who had received the necessary permission of the commanding General. The "comfort stations" managers were required to follow rules and regulations issued by the Japanese military.

44. In August 1944, at age 15, Maxima Regala de la Cruz, a survivor of the "comfort" system from the Philippines, testified through a video before the Tribunal that a Japanese soldier forcibly seized her and her mother from the streets of their town and took them to a nearby house. There they were locked in a room and separated each night, whereby each of them was repeatedly raped. Maxima Regala de la Cruz described her experience in the following words:

[A] Japanese soldier entered my room. He told me to lie down on the bed. I refused and he forced me to lie down. I screamed and struggled until he drew his sabre and pointed it at me. I was so scared that I fell silent. He then pushed me to the bed and raped me. I cried for help and pleaded with the soldier to stop but he did not listen to my pleas. Since that first time I was sexually abused, I became extremely nervous. Every time a Japanese soldier armed with a sabre would enter the room and touch me, I would faint. That is why I cannot recall the exact number of times that I was raped. I knew that I was raped though because I felt aches and pains all over my body especially in my private parts.

45. Both her and her mother remained in the "comfort station" for three months. One day in October 1944, when the soldiers did not lock their door, Ms Regala de la Cruz and her mother escaped and they found help for the mother, who was very weak. They were also assisted in returning to their family home where they were reunited with their family.

46. In Malaysia, the "comfort stations", like their counterparts in the Philippines, were heavily regulated by the Japanese military, particularly with regard to the medical treatment deemed necessary to prevent

sexually transmitted diseases. Rosalind Saw from Malaysia testified through videotape that one night, soon after the December 1941 invasion of Malaysia when she was approximately 24 years old, Japanese soldiers took her away from her home and children. The soldiers put her into a lorry with other women from her village and took her to a "comfort" facility in Penang, Malaysia run by an elderly Japanese woman and containing other women of Chinese, Malaysian, and Eurasian descent. She was given the Japanese name of Hanako. As a result of the rapes she became pregnant and after giving birth to a boy, since abortion was not allowed there, had to return to the "comfort station." Rosalind Saw returned home to raise her children after the war ended.

47. The Japanese army also erected "comfort stations" in Indonesia in the wake of their invasion in 1942. It forcibly interned many girls and women of native Indonesian and Dutch descent in the "comfort" facilities for the purpose of using and abusing them sexually. Although many Indonesian women were forced into sexual slavery locally, some were sent abroad.

48. One witness from Indonesia, Ms. Suhanah, reported that in 1943, when she was seventeen years old, six Japanese soldiers approached her when she was in her backyard and offered her a job or the ability to continue her schooling. She refused their offer, and consequently was pulled by her hair and forced at rifle point into their jeep, which took her to a "comfort" house two kilometres away. Three days after her abduction, Ms. Suhanah underwent a medical exam and was subsequently raped and whipped by a Japanese soldier for refusing to submit to his sexual advances. She was forced to sexually service at least three soldiers per day, as well as the examining doctor, and her sexual violence was regularly accompanied by additional brutal and degrading treatment. When she could no longer sexually service men due to contracting a venereal disease, she was allowed to go home.

49. In 1942, following the Japanese invasion of Indonesia, the Japanese soldiers interned the Indonesian civilians of Dutch descent in separate internment camps for women and children and for men. The witness Jan Ruff-O'Herne, who was nineteen years old at the time, was one of the Dutch women enslaved. The officials took these young women to a large Dutch colonial house surrounded by high fences and barbed wire. The women were given their own rooms and informed that they would have to provide sexual service on demand to high-ranking Japanese officers. They protested, cried, and refused. Ms Ruff-O'Herne testified that she was brutally raped on a daily basis by a series of Japanese officers. Recalling her experience on the first night, Jan Ruff-O'Herne stated:

We were all virgins....I wanted to be a nun....We were given Japanese names, and these Japanese names, they were all names of flowers....He dragged me up from under the table, and immediately I kicked him and fought him, but he was so strong. He dragged me into the bedroom, and in the bedroom again I started to fight with him....He threw me on the bed and tore off all my clothes....He ran the sword over my body, starting at my neck, right down my body, right up my legs, and just playing with me like a cat would do a mouse...until he eventually brutally raped me.

50. Following the invasion of East Timor in 1942, the Japanese military forcibly and deceptively interned women of Timorese and Indonesian descent in sexual slavery facilities and used them sexually.

51. The witness Esmeralda Boe testified before the Tribunal that she was only a child when the Japanese soldiers kidnapped her from a field near her home in East Timor. She did not know her age at the time of her capture, but recalled that she had not begun her menstruation yet and that her breasts were just begin-

ning to grow. The Japanese soldiers took her to a house where a commander named Shimimura raped and sodomised her. Esmeralda Boe described her first harrowing experience with sexual violence committed by the Japanese military:

He took off his clothes and took my clothes off. I was so young I had no idea what he was doing. And he pushed me to his bed and then that's when he start[ed] to rape me...[H]e did the sexual intercourse through my vagina and also my anus.

52. Although she was allowed to go home, Japanese soldiers returned to her home every evening to take her to Shimimura's residence to sexually service either Shimimura or two other Japanese commanders. This lasted for three years. Esmeralda Boe stated that her parents despised what was happening to their daughter but that they dared not protest for the Japanese threatened them with death if they did not let her go. During the daytime, she worked very hard in the fields and woods for the Japanese under the threat of a beating or other punishment if she did not do the work well.

53. Another East Timorese survivor, Marta Abu Bore also testified before this Tribunal that during the day, she was taken to cut wood in the forests in Maraboro with several other women and at night she was taken to the homes of Japanese soldiers where she was gang raped by up to ten men at a time. She testified that she and the other women were treated like animals and that their parents were threatened with death if the women did not go to the homes of the Japanese soldiers. In addition to her live testimony, Marta Abu Bere also recounted her ordeal in a statement submitted to the Tribunal:

During the night the Japanese...entered my room. At that moment I didn't know anything, my clothes were stripped with force and I was pushed to the bed. I was forced to service 10 men; I was treated like an animal. They told me not to yell, [that] if I yell they would kill me. In the morning I couldn't walk because I was in pain...During the day I had to service 4-5 men. When they entered the room they wore civilian clothes and their gun[s] were kept away. I had to service them for 3 months.

54. Marta Abu Bere got out of the "comfort station" when her parents succeeded in persuading the Japanese Army Commander that their daughter was too weak to remain in the station any longer.

55. Finally, the Japanese military also recruited Japanese "comfort women". The recruitment of the women was heavily regulated. While the majority of Japanese "comfort women" had previously been prostitutes, the evidence indicates a significant number of other Japanese women and girls were forced into sexual servitude as well. Whether or not they had once been prostitutes, many of the Japanese women procured, as those from all over Asia, were eventually forced into sexual slavery as "comfort women."

Rape of Mapanique

56. On November 23, 1944, the Japanese army attacked the village of Mapanique and systematically raped an estimated 100 women as part of the wholesale destruction of the village, during which the community was bombed, houses were looted and burned, and men were publicly tortured and slaughtered. The soldiers raped all of the young women and teenage girls of the village whom they could find. Many older women were raped as well. Virginia Manalastas Bangit testified that she was with her niece and another girl when she was taken to the Red House. Although the soldiers dragged them to different parts of the house, she could hear the others screaming, crying, and getting slapped just as she was. She also testified that some soldiers wore a woven bag over their heads to hide their faces.

57. Some witnesses testified to seeing their family or neighbours tortured or killed. Tarcila Mangulabnan Sampang was forced to witness the sexual torture of her father. She stated, "My father was separated from the other men in the village. He was the only one. They kept pummelling him and took his clothes off. They cut off his penis. I saw him stand there, bloodied, as they sliced his flesh off right in front of us. They made him eat his flesh. I saw my father being tortured right in front of me while I stood there unable to do anything about it." Several other witnesses also testified about this incident.

Characteristics of the Military Sexual Slavery System

58. The Judges find that the system of Japan's military sexual slavery was a standard and integral part of Japan's aggressive war throughout Asia-Pacific. The Judges also find that girls and women throughout the region were taken either by abduction, conscription or coercion, or through deceptive means, and forcibly made part of the military sexual slavery system. Once enslaved, the girls and women were subjected to continuous and sometimes gang rape and other forms of sexual violence and torture. They lived in miserable conditions, with poor food, no privacy, and a lack of hygiene.

59. Most of the young girls or unmarried women lost their virginity when they were first raped. During their time in the facilities, the relentless violence and violations resulted, intentionally or incidentally, in a variety of reproductive harms, such as pregnancy, abortion, miscarriage, sterilization, sexually transmitted diseases, and sexual mutilation. The beatings, stabbings, burnings, and sexual tortures inflicted during the course of the rapes and enslavement caused enormous pain and suffering, as did the humiliating medical checkups forced upon the women. These abusive conditions also caused severe emotional or psychological harm. The appalling conditions of detention often resulted in malnutrition, disease, illness, or death. A large number of women and girls did not survive the conditions or mistreatment or were intentionally killed.

60. From its establishment, the Japanese military issued extensive regulations governing the "comfort system." Among these were the health regulations designed to prevent and identify sexually transmitted diseases (STDs). Other regulations detailed the type of women to be selected for use as "comfort women," the ages of the victims to be targeted, the conditions of the "comfort stations," and the rules to be followed by the "comfort women." Finally, the regulations indicated the proper behaviour expected of the soldiers, and required that "comfort women" should be available to only those military personnel who had paid, and that a general ticketing system be installed to ensure this.

Who Were the "Comfort Women"?

61. The Japanese military preyed on the most vulnerable members of society for its sexual slavery system - those who because of age, poverty, class, family status, education, nationality, or ethnicity were most susceptible to being deceived and otherwise trapped into slavery. The women were drawn primarily from Japan's occupied and annexed territories, mostly from poor and rural communities.

62. A very large number of the comfort women were, in fact, girls when they were taken away to be forced into sexual slavery. Of the witnesses who testified before this Tribunal, one - Tomasa Dioso Salinog - was taken at 12 years and the vast majority were under the age of 20 when they were enslaved. Since so many of the victims have since died, it is impossible to say with any accuracy their median age when they were

enslaved; women who were older when they were enslaved are less likely to have survived to this day. Nevertheless, the evidence is striking: many of the witnesses testified that they themselves were underage and that they saw other underaged girls similarly enslaved. Moreover, other documents, such as school records, confirm that young girls were targeted. The evidence regarding the forced examinations by military doctors shows that the Japanese military was particularly interested in obtaining girls who had not previously engaged in sexual activity.

63. Despite the common assertion by apologists for Japan's military sexual slavery system that the "comfort women" were voluntary prostitutes, this Tribunal firmly rejects this claim, although it does not suggest that there were no voluntary prostitutes servicing members of the Japanese military during the war. While the military did involve some former prostitutes in the "comfort women" system, the evidence shows that once a part of the system, the former prostitutes suffered the same slave-like conditions as the other women and that they were not free to refuse to become "comfort women" or, once a part of the system, they were not free to dictate the terms of service or to leave.

64. Although many "comfort women" were summarily killed as the war neared an end, others were simply ignored and left stranded far from home. Many witnesses testified that the Japanese army abandoned the "comfort stations" when the war was over and left them to fend for themselves and attempt to make their way back home, despite overwhelming obstacles.

Continuing Harm

65. The suffering did not end with the termination of the war or their release from sexual enslavement; they were constantly challenged in the process of rebuilding their cruelly shattered lives.

66. Overcoming enormous obstacles - both material and social - these brave women have given survival new meaning. They worked hard to support their families and themselves, often at menial labour and at low paying jobs, despite their emotional pain and physical illnesses and disabilities. They endured hostility, ostracism, and invisibility.

67. In the some fifty-six years since the war ended, the survivors have endured and struggled with the long-term effects of sexual violence and servitude, in the form of physical injuries that left scars and lasting pain and disability, mental and emotional suffering consistent with expert descriptions of post traumatic stress, damage to their reproductive capacity, and harm to their social relationships in marriage, work, and community.

68. In sum, for survivors of rape, sexual slavery and other forms of sexual violence, the social and economic consequences of their experiences, as well as the physical and emotional trauma they suffered, combined to make life a daily struggle.

APPLICABLE LAW

Preliminary Legal Issues

The Principle of Legality: Nullum Crimen Sine Lege

69. It is a fundamental principle of criminal law that no one shall be prosecuted for acts that were not recognised as crimes at the time the acts were committed. In this proceeding, we respect this principle by applying the law of 1937-45 to the charges in the Common Indictment.

Due Process

70. It is argued that as an in absentia proceeding involving accused who are deceased, this proceeding violates the international understanding of due process of law. The Judges note that due process constitutes an obligation of the state and of those that wield legal authority. Further, the extent of process due is contingent on the potential prejudice to the individual whose rights are affected. This is a Peoples' Tribunal, however, which has no power to punish the accused, nor to compel testimony or production of evidence. Nor does it have any power to force either the accuseds' heirs or the state of Japan to provide reparations to the victims or those entitled to make claims on their behalf. This Tribunal can only make findings of fact and law, issue verdicts in the form of declarations. It can make recommendations to encourage or influence the state of Japan to provide appropriate remedies, but it has no power to enforce them.

71. Nonetheless, the Judges invited the state of Japan to participate and, hearing no answer, invited an amicus curiae or "friend of the court" submission to present the anticipated arguments of the defence in order to lend balance to our consideration.

Statute of Limitations

The state of Japan has contended that all judicial initiatives concerning the activities of the Japanese military during World War II are now barred by a statute of limitations. The Judges reject this argument because there is no statute of limitations for crimes against humanity charged in this case.

Head of State Immunity

72. The Judges also reject claim that heads of states and other high-ranking officials enjoy absolute immunity from prosecution for crimes committed while acting in an official capacity. Reflecting international law at the time, both the Nuremberg and Tokyo Charters rejected immunity even for heads of state. It was applied by the Nuremberg Tribunal but not by the IMTFE because it was decided to shield the Emperor from liability. More recent developments in international law affirm the principle that crimes against humanity are ultra vires: they are beyond any conceivable definition of a head of states' or other public officials' legitimate powers. As and, as such, they do not form part of the legitimate official functions that the immunity doctrine is designed to protect.

The Substantive Crimes Charged: Rape and Sexual Slavery as Crimes against Humanity

Precedents for the Concept of Crimes Against Humanity

73. In terms of the principle of nullum crimen sine lege, it is beyond dispute that acts constituting crimes against humanity listed in the Nuremberg and Tokyo Tribunal Charters - murder, extermination, enslavement, deportation, and other inhumane acts - were established crimes during the Asia-Pacific Wars. Thus, the concept of crimes against humanity did not create crimes, but rather applied to conduct, which was already unquestionably criminal, a term which underscored its egregiousness of the crimes. In addition, crimes against humanity embraced crimes parallel to war crimes and extended them to persons, here the women of Korea and Taiwan, presumably "under the protection" of the offending state.

74. The Judges find that as of 1945, crimes against humanity required that the prohibited acts be committed (1) before or during war, (2) as part of a large-scale or systematic attack committed against a civilian population, and (3) in connection with war crimes or crimes against the peace.

Application of the Threshold Conditions of Crimes Against Humanity to the Facts

75. The evidence presented at trial overwhelmingly establishes that the acts of rape and sexual slavery committed as part of the "comfort system" and the rapes at Mananike meet all these criteria.

Rape as a War Crime

76. Notwithstanding the military use of rape and sexual violence as a weapon of war, these crimes have been prohibited by the customs of war for centuries. As international humanitarian law began being codified in the latter part of the 19th century, rape was explicitly and implicitly prohibited as a war crime. By 1937, rape was considered a war crime under the laws and customs of war and, in addition, commanders had a specific duty to prevent sexual violence against women.

Sexual Slavery

77. The Tribunal has examined five sources which provide both explicit and implicit authority for the crime of sexual slavery in our Charter. These include the 1926 Slavery Convention; the 1930 ILO Convention on Forced Labour interpreted in 1997 by the ILO Committee of experts to "absolutely" forbid such forced sexual labour; and forced labour as a war crime under the 1907 Hague Convention in regard to which we note the horrifying parallels between the system of military sexual slavery and the vast and brutal program of forced labour of both Germany and Japan. We also note the applicability of Conventions against Trafficking and Forced Prostitution.

Essential Elements of Sexual Slavery and the "Comfort System

78. The 1926 Slavery Convention, which defined 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," provides the overarching and enduring element of slavery. This definition incorporates both the chattel and forced labour concepts discussed above and applies with full force to sexual slavery. Based on the 1926 Convention, we also recognize that acts involved in the acquisition of persons for the purposes of enslaving them is an integral part of the enslavement process.

79. Thus we find that the actus reus of the crime of sexual slavery is the exercise of any or all of the powers attaching to the right of ownership over a person by exercising sexual control over a person or depriving a person of sexual autonomy. The mens rea is the intentional exercise of such powers.

80. The evidence establishes conclusively that the Japanese government and military exercised powers attaching to the right of ownership over girls and women in the "comfort system." The Japanese military and their civilian agents asserted ownership over the women by procuring them by force, purchase, and deceitful recruitment; by confining them and brutally punishing attempts to escape; by demanding their obedience and subservience; by subjecting them to repeated rapes and other forms of sexual violence; by otherwise torturing, mutilating and punishing them for disobedience; by subjecting them to invasive and inhumane medical examinations often involving rape; by subjecting them to unwanted pregnancies, forcing them to have abortions or give up their children; and by killing them or abandoning them when their services were no longer of use. Each of these acts and all of these acts were violations that most assuredly amounted to rape and sexual slavery as crimes against humanity.

Rape in the Context of Mananike (Count 3)

81. The rapes to which the witnesses testified followed a consistent pattern which included separating the

males from the females, torturing and killing the males, forcing the girls and women to carry loads to the Red House, raping them repeated in the Red House. Many were also raped in their homes and enroute to the Red House. Most were gang raped or raped by a series of perpetrators, often in front of others, and sometimes for extended periods of time. The pattern reveals that the rapes were committed as part of a plan or policy. That the attackers established a hierarchy in which officers used the house, while soldiers used the surrounding tents, which they brought and set up, provides further evidence of the organised and systematic nature of the rapes and of their character as crimes against humanity.

Slavery v. Forced Prostitution: Correcting the Legal (Mis)characterisation.

82. The identification of sexual slavery as an international crime in our Charter and, by this Tribunal, is, in our opinion, a long overdue renaming of the crime of [en]forced prostitution. As such, it responds to the concern expressed by survivors of the "comfort system" that the term "forced prostitution" obscures the terrible gravity of the crime, suggests a level of voluntariness, and stigmatizes its victims as immoral or "used goods." Naming the crime as sexual slavery will we hope contribute to lessening the misplaced and discriminatory stigma for these survivors as well as for future victims of such crimes.

INDIVIDUAL CRIMINAL RESPONSIBILITY

83. Counts 1 and 2 of the Common Indictment charge the Emperor and 8 other high level military or government leaders with individual and superior responsibility for the crimes of sexual slavery and rape as crimes against humanity. Count 3 charges Emperor HIROHITO and YAMASHITA with criminal responsibility for the rape of women at Mapanique as a crime against humanity.

84. To incur Article 3(1) individual responsibility, the accused must have participated through ordering, planning, committing, instigating, aiding, or abetting crimes, and he must have had knowledge of the crime. By contrast, to incur Article 3(2) command or superior responsibility, the evidence must show that the accused was a superior who knew or had reason to know that subordinates may be involved in criminal activity, and the superior failed to take necessary and reasonable measures to prevent or suppress the crimes and punish the perpetrators. Because there is no evidence which suggests that any meaningful attempts were made by the accused to prevent or punish crimes related to the "comfort system" or the rapes in Mapanique, the sole remaining issue for Article 3(2) liability is to determine whether the accused had a duty to prevent the commission of the crimes by subordinates.

85. It is impossible to give credence to the claim that officials believed that the "comfort" girls and women from conquered, colonized, and annexed territories were providing their services willingly to assist the Japanese army, or that the women and girls would have agreed to provide or continue to provide sexual services once the brutal and slave-like conditions in the "comfort stations" became known, and the fact that they had to provide sexual services to an endless number of soldiers.

86. There were numerous indications that the "comfort system" was a system in which women were enslaved and held for sexual access by the Japanese soldier. Evidence suggests that approximately 200,000 girls and women were kept in a variety of facilities, be it formal stations, makeshift shacks, or opportune caves, and these stations existed everywhere that Japanese troops were present, including on the frontlines,

and that the women had no capacity to refuse services to any demanding them. The logistics in securing, transporting, housing and maintaining the women would have been impossible to implement without approval from the top authorities. Both army and navy support and coordination were required simply for the transportation of the women across countries and through war zones. The costs involved had to have been substantial and required a significant allocation of resources.

87. The ubiquity of the "comfort stations" and the inhumane conditions in which the "comfort women" and girls were detained would have been obvious. Most of the victims were very young, and most were in a perpetual state of exhaustion, pain, malnutrition, depression, and deteriorating health due to the extreme physical, mental, and sexual violence to which they were subjected. They were generally forced to endure horrendous conditions of detention, such as cramped spaces, inadequate food, water, hygiene, and ventilation, selective and invasive medical treatment, repressive, degrading, and exploitative treatment, and reproductive violence, including pregnancy and/or maternity resulting from rapes, forced abortion, forced sterilization, or illness from pregnancy-prevention drugs.

88. The involuntary nature of the "comfort stations" would also have been clear from the fact that they were commonly surrounded by barbed wire and had armed guards and locked doors, indicating that the women were held against their will.

89. In sum, the "comfort system" was designed and maintained to facilitate the rape and sexual slavery of tens of thousands of young girls and women from occupied or conquered territories in the Asia-Pacific region in order to facilitate the war effort. The scale of the "comfort system" was so enormous, the conditions so inhumane, and the operations of the stations so consistent, that no other conclusion can be reached but that the highest level political and military officials must have known of the criminal nature of the system which they set in motion and sustained. Indeed, a system so vast required the planning and knowing participation of a large number of actors at all levels of the hierarchy. Military and government leaders responsible for organising and supervising the movement and activities of troops had to have approved the establishment of "comfort stations" or other facilities for rape and sexual slavery and/or known of the criminal nature of the system. Indeed, from the lowest level soldier visiting the stations, to the top military and government officials who devised and oversaw the regulation of the system, to midlevel actors who procured women and girls for the stations and supplied the necessities, officials at all levels participated in facilitating and maintaining the system of rape and sexual slavery. In light of the fact that there were regulations distinguishing between visits to the "comfort stations" by officers and soldiers, it is the view of the Judges that many superiors also used the "comfort stations," which would also serve to condone and encourage the system.

90. The "comfort system," in essence, was state-sanctioned rape and enslavement. The practice of deception, coercion, purchase, and force used to secure women for the "comfort system" was so widespread, the numbers of women acquired so enormous, and the pressure to expand the system so great that the crimes involved had to have been known to high-level participants of the system as well as to those who oversaw the maintenance of the system and the continued supply of women.

91. In total, the "comfort women" system lasted over 13 years and there were literally thousands of facilities in which women were held for sexual slavery throughout some dozen countries in the Asia-Pacific region. The system depended upon massive transnational trafficking of women and young girls to and

between these stations, often by military escorts or on military vehicles or vessels. Nonetheless, the persons in positions of authority or influence did nothing meaningful or effective to prevent or stop the crimes from being committed on a daily and indeed hourly basis.

92. In addition, the Tribunal has determined that the following has been proved beyond a reasonable doubt:

- * that tens of thousands of women and girls were deceived, forced, coerced, conscripted, sold, or otherwise unlawfully procured into the so-called "comfort women" system;
- * that the "comfort system" was conceived, established, regulated, maintained, and facilitated by the Japanese government and military, often utilizing, or with the complicity of, local authorities or agents;
- * that the "comfort system" was established throughout the Asia-Pacific, including on the frontlines, by the Japanese government and military to provide relatively safe and convenient sexual services to members of the Japanese military;
- * that in 1937, after the international and local outrage generated by rape as part of the assault on Nanking (or "Rape of Nanking"), the "comfort system" was expanded on an urgent basis to attempt to stop the indiscriminate rape of local women and soon thereafter became firmly entrenched as an intrinsic part of the Japanese military strategy;
- * that the "comfort system" was criminal in nature on multiple levels, most particularly as a result of the illicit methods of procurement; the crimes of rape, sexual slavery, and other forms of mental, physical, sexual, and reproductive violence committed against the victims enslaved in the system; and the inhumane conditions of detention;
- * that the system was so extensive, the regulation of it so complex, and the crimes committed therein so routine that the criminal nature of the system had to have been known to most members of the Japanese military and to those holding high-level positions concerned with the war effort. The system was indeed a "system", and all the elements that make it a system demonstrate official involvement of the required levels;
- * that the regulations pertaining to "comfort stations" did not ensure that the women's participation was willful or knowing, that women were protected against rape and other forms of violence, and that the women were able to refuse services and to leave the facilities. Instead, the regulations were designed solely to protect Japanese interests; and
- * that rape and sexual slavery as crimes against humanity contained in this Tribunal's Charter and prohibited by the laws and customs of war in effect at the time, and charged in Counts 1 and 2 of the Common Indictment, were committed against the former "comfort women."

93. It is clear that persons holding a high level position of authority in the Japanese government or military with connections to the war effort or the "comfort system" would have had to have known of the criminal nature of this system unless exceptional circumstances existed that would cast doubt as to whether the particular person knew or had reason to know that crimes were being committed.

94. Each of the accused did hold either the highest or one of the highest level positions concerned with the war effort within the Japanese government or military between 1937 to 1945, during which time the "comfort station" system was continually expanded and maintained under the authority and for the use of the Japanese military. With the sole exception of MATSUI, all of the accused held their positions of authority or influence for at least four years, some for considerably longer. Each accused held their

positions during the time that rape and sexual slavery was institutionalized in the "comfort women" system established by the Japanese military.

95. The Judges considered the fact that Matsui held his position of authority for only 7 months during the initial stages of institutionalizing the comfort station system and that this may have been an exceptional circumstance that prevented Matsui from being aware of and participating in the crimes committed in the comfort stations. However, an examination of the evidence established that even during this comparatively brief period, troops under Matsui's authority actively abducted women and forced them into sexual slavery, and that he authorized the expansion of stations throughout the territory under his control.

96. The Judges also extensively examined and forcefully rejected the claim that the Emperor was merely a figurehead who did not have knowledge of the crimes or possess the power to prevent them.

97. These findings as to the power and authority of the accused, their knowledge of the criminal nature of the "comfort system" and their continued participation in establishing, maintaining, or facilitating the system led us to conclude beyond a reasonable doubt that all accused were guilty of both individual and superior responsibility for the rapes and sexual slavery committed as part of the comfort system. Therefore the Tribunal finds Emperor HIROHITO, ANDO Rikichi, HATA Shunroku, ITAGAKI Seishiro, KOBAYASHI Seizo, MATSUI Iwane, TERAUCHI Hisaichi, TOJO Hideki, and UMEZU Yoshijiro GUILTY under Counts 1 and 2 of the Common Indictment as incurring both individual and superior responsibility, pursuant to Articles 3(1) and 3(2) of the Charter, for their knowing participation in a criminal system which cultivated and sustained a system of rape and sexual slavery.

Count 3 of the Common Indictment: Rapes in Mapanique

98. In Count 3 of the Common Indictment, the Prosecutors charge Emperor HIROHITO and General YAMASHITA with individual and superior responsibility for rape as a crime against humanity under Articles 3(1) and 3(2) of the Statute for the mass rape of women and girls in Mapanique.

99. With regard to the rape crimes and other forms of sexual violence committed against women and girls in Mapanique beginning on November 23, 1944, the evidence demonstrates the following:

- * That the women and girls in Mapanique were subjected to multiple, extreme forms of violence as part of a punitive or "subjugation" attack on the village in order to destroy anti-Japanese activity there.
- * The attack on the women in Mapanique was widespread. It was visited upon many of the women of Mapanique and included having to witness torturous deaths of loved ones, and endure torture, forced labour, and grotesque humiliations.
- * That soldiers rounded up the women and girls and caused them to be detained at a central place, the Bahay na Pula or Red House, where they subjected them to mass rape, gang rape, and other forms of sexual violence inflicted with wanton brutality.
- * That, as found by the IMTFE and confirmed by the testimony in this case, Japanese soldiers routinely engaged in rape accompanied by other sadistic brutality in the Asia-Pacific wars.
- * That the rape and other crimes at Mapanique were committed by forces under YAMASHITA's authority and control and as part of a campaign of subjugation or punishment ordered and approved by General YAMASHITA in October 1944.

100. YAMASHITA was Commander of the 14th Army from September 1944-September 1945, during

which time he was responsible for troops operating in the Philippines, including in Mapanique on November 23, 1944.

101. HIROHITO was not the direct superior to YAMASHITA, the commander of the troops who attacked Mapanique, although he was certainly his superior. The expansion of the Japanese military into Southeast Asia was of critical importance to the war effort and given his position, HIROHITO would have followed the war there closely. HIROHITO had to have known of the Filipino people's resistance to the Japanese military and of the Japanese military's brutal suppression of this resistance. HIROHITO was clearly on notice that crimes might be committed against civilians, yet he made no attempt to prevent the crimes nor did he ensure the crimes were punished after their commission. Accordingly, we find HIROHITO criminally responsible as a superior for the rape crimes committed against women and girls during the "Rape of Mapanique."
102. At the same time, we consider that the Emperor cannot be individually liable for every mass crime committed during the war. For Article 3(1) individual responsibility to attach, he must have knowledge of the crime and participate in some way - through planning, ordering, instigating, committing, aiding, or abetting - in the crime. While this was readily established in the case of the former "comfort women" with the criminal activity committed throughout the Asia-Pacific over several years, the Mapanique crimes were committed over a couple of days in a small village in the Philippines. Thus, without more evidence to establish the Emperor's knowledge or participation, we find that there is an insufficient basis upon which to conclude beyond a reasonable doubt that HIROHITO had actual knowledge of the rapes or that he participated in the crimes. As such, we decline to find that Emperor HIROHITO incurs individual responsibility for the crimes committed in Mapanique, and thus dismiss that part of the charge due to insufficient evidence. However, he does incur superior responsibility as a superior for the rape crimes committed in Mapanique.
103. As to responsibility of Yamashita for the Mapanique rapes, the evidence demonstrates that YAMASHITA was an experienced commander who held positions of high authority within the Japanese military. From July 1938 to September 1939, YAMASHITA served as Chief of Staff to the North China Area Army. In November 1941, he became Commander of the 25th Army in Malaya, a position he held until July 1942, when he became Commander of the 1st Army in Northern China. In September 1944, he was appointed to serve as Commander of the 14th Area Army in the Philippines. In such high-ranking military posts, YAMASHITA exercised enormous power over his subordinates.
104. YAMASHITA took control of the 14th Area Army in the Philippines in September 1944. Significantly, on October 11, 1944, YAMASHITA promulgated his "Guiding Principles for Philippine Operations" in which he warned his troops of the danger of "schemes" and attacks by Philippine civilians and enemy paratroopers. YAMASHITA issued an order to purge Mapanique of all "anti-Japanese Communist guerrillas through a punitive or subjugation mission. The next day, 14th Army troops entered Mapanique and went on a rampage of brutality against Filipino civilians including the mass rape of some 100 women and girls.
105. Survivors of this mass rape testified before this Tribunal, and their testimony demonstrates that rape occurred according to a pattern. The evidence shows that soldiers attacked the village of Mapanique and rounded up the villagers, separating the men from the women and children. The soldiers then tortured,

mutilated, and killed the men, and forced their families, including some of the survivors who testified before this Tribunal, to watch. Afterwards, the Japanese soldiers led the women and girls of the village to the Bahay Na Pula (the "Red House") and repeatedly raped them.

106. YAMASHITA was a high level commanding officer for several years throughout the war, and thus he was clearly apprised of past criminal activity, including rape crimes, committed by Japanese troops under his command. In addition, we find that YAMASHITA both knew and had reason to know that soldiers under his command committed rapes at Mapanique. The culture of violence created and perpetrated by his troops throughout the Philippines put him on notice that attacks on villages were commonly accompanied by atrocities including rape and other forms of torture.

107. Accordingly, YAMASHITA failed in his duty to prevent future crimes and to institute measures to prevent, monitor, and punish these crimes and to ensure that his troops respected the laws and customs of war. In addition, he failed to punish the crimes after they occurred, which also incurs superior responsibility.

108. Based upon his status as commander and the aforesaid findings that he knew or had reason to know that troops under his command were likely to commit violence, including rape, and that he did not exercise his power to control his troops, the Tribunal finds YAMASHITA GUILTY of the rapes at Mapanique in accordance with the principles of superior or command responsibility pursuant to Article 3(2) of the Charter.

109. In addition, as Commander of the 14th Army at the time of the "punitive missions" in the Philippines, the Tribunal finds that YAMASHITA ordered, instigated, approved, assisted, and/or encouraged attacks such as the one against Mapanique, that despite knowing that crimes, including rape and sexual violence, were likely to be committed. YAMASHITA Tomoyoki is also found GUILTY of individual responsibility pursuant to Article 3(2) of the Charter for the mass rape of women and girls in Mapanique, as charged in Count 3 of the Indictment.

STATE RESPONSIBILITY

110. In addition to the Common Indictment filed against the individual accused, an Application has been submitted which claims that the state of Japan is responsible under international law for the internationally wrongful acts - the rapes and sexual slavery - committed by the Japanese army and seeks restitution and reparation for the women victimized by these crimes. Article 4 of our Charter authorizes this Application and provides that state responsibility arises from both the commission of crimes and acts and omissions which violate other obligations of the state flowing from the original wrongful acts.

111. The Tribunal finds that the applicants have standing before the Peoples' Tribunal established to consider claims of civil society, and that the failure of claimants before Japanese domestic courts shows the futility of their continuing to seek domestic remedies. We find that the remedies under domestic law are unreasonably prolonged and that the survivors are entitled to bring this Application under Article 1 of the Charter.

Elements of State Responsibility

112. Under general international law, a state is responsible for any international wrongful act that is attributable to the state that has damaged the legitimate interests of others. Such responsibility of a state is additional to and exists alongside the international criminal liability of the individuals guilty of crimes committed in violation of international law. A state bears responsibility for wrongful acts when a state, either through its own conduct or through the conduct of its agents or organs, acts in violation of an international duty and thereby commits an international wrong. It is a fundamental principle of international law that the breach of an international duty incurs an obligation to make reparation in an adequate form. The duty must generally have been incumbent upon the state at the time the act complained of was committed.

Japan's Initial Violations of Treaty and Customary Law

113. As explained in the Judgement on the Common Indictment, we find that the state of Japan committed, through its officials and their agents, actively and through their failure to prevent, punish and protect, the internationally wrongful acts, as charged in the Common Indictment from 1937-1945, of rape and sexual slavery as crimes against humanity. Japan's conduct also directly breached a number of its treaty obligations, many of which also constituted customary international law.

114. Further the Judges find that, even before their recognition in the UN Charter, norms of protection of women and of sexual equality, together with parallel norms of racial equality, were emerging at the beginning of the 20th century.

115. The evidence demonstrates multiple violations of both the requirements for the protection of women as well as the prohibitions on race and sex discrimination. Most fundamentally the evidence shows that women were targeted for the provision of forced sexual services because they were women, thus denying them gender equality as well as their rights to respect for their physical, mental and sexual integrity and human dignity. The creation of the "comfort women" system, reflects the intersection of extreme discrimination based on both gender and race/ethnicity. The ethnocentrism and racism of the Japanese military and government resulted in the prevailing philosophy that it was more acceptable to make colonised and conquered women into "comfort women" than Japanese women.

Attributability of Internationally Wrongful Acts to the State of Japan

116. For the state of Japan to be responsible under international law for the internationally wrongful acts of rape and sexual slavery for which this Tribunal has convicted the accused, as well as for the subsequent breach of continuing obligations, their wrongful acts must be attributable to the state.

117. States act through the institutions and agencies of the state, its officials and employees. Such institutions have long been commonly referred to collectively as organs of the State.

118. Armed forces are clearly state organs and part of the administration of the state. A state may be liable for a failure to control elements within the military structure when in all the circumstances it is reasonable to assume such a duty to exercise control. States may be responsible for ultra vires acts of their officials committed within their apparent authority or general scope of their authority.

119. What matters is the amount of control that ought to have been exercised rather than the amount of actual control. The findings of the individual command or superior responsibility under international law

of Japan's heads and high-ranking leaders are more than sufficient evidence of internationally wrongful acts attributable to the state of Japan.

120. The conduct of a non-official, or private person or groups of persons may be attributed to the state under international law, provided such person(s) were acting on behalf of the state.

121. The evidence has established that private individuals recruiting "comfort" women were selected, monitored, assisted and, in a substantial number of cases, directly accompanied by the Japanese military; their offers and demands were backed by the intimidation of military involvement. As such, the civilian recruiters were acting on behalf of the Japanese military and were clearly agents of the Japanese military. Accordingly, their acts were attributable to the state of Japan. Japan is also responsible for all violations of its international obligations perpetrated by private individuals that it acknowledged or adopted. The judges consider that in addition to the illicit recruitment methods, the subsequent rapes and sexual slavery imposed and regulated by the Japanese military constitutes sufficient acknowledgment and adoption.

Continuing Obligations and Violations of State Responsibility

122. Japan committed breaches of the following continuing obligations:

States have an obligation to declassify information concerning past wrongdoing and provide means for its preservation, analysis and accessibility to the public, both lay and scholarly. The right to know the truth is a derivative of the right to ensure human rights; it is a precondition to the effective use of remedies for violations and a deterrent against future wrongdoing. The Judges note the increasing use of truth commissions and public inquiries to uncover past crimes.

The expert testimony and memoirs of former officials make clear that at the end of the war, the Japanese government--and specifically the Cabinet--ordered the destruction of evidence by burning and concealing documents with the intention of exempting the Emperor from responsibility and protecting state officials from incrimination for egregious war crimes and crimes against humanity.

The destruction of documents, including documents relevant to the military sexual slavery system, was itself recognition by Japan of the wrongfulness of its acts and constituted a continuing violation of state responsibility to investigate and publish the truth and bring the perpetrators to justice.

Continuing Concealment of Documents

123. The scarcity of documentation on "comfort" women is exacerbated by the continuing resistance of the Japanese government to revealing even those documents that survived the pre-surrender destruction. According to Professor Yoshimi, a group of documents written prior to 1942 and stored in an underground warehouse survived the destruction because the Allied Forces prevented their scheduled incineration in the final days of the war and brought them to the United States. His historic disclosure was made possible because "[n]o one knew that this collection contained documents relating to the comfort women." We note that the admissions that have been made by Japan have only been in response to the discoveries of researchers, diplomatic pressures, and the persistent demands of non-governmental organisations.

Continuing Failure to Make a Full and Genuine Apology

124. Japan has failed to make a valid apology to the victims on behalf of the state and incurs responsibility

for this continuing failure. In their testimony at the hearings, the survivors emphasized the importance of receiving an apology directly from Japan and from the direct perpetrators and their fervent rejection of the apologies made to date. We believe it is important for the sake of the survivors to be precise about both the efforts that Japan has made to date to apologize and the shortcomings of these efforts. We find that although Japanese officials have, since beginning its guarded admissions in 1992, issued statements of regret to the comfort women, these apologies have been deficient in content, process and the language of apology chosen. We will illustrate these efforts and examine their deficiencies herein.

125. First, the Prosecutors contend that the language used did not constitute a genuine apology in the sense that it did not acknowledge official responsibility for and recognise the crimes inflicted on the comfort women. Professor Yoshimi points out in his book that "owabi," is the Japanese word that has been translated into English as "apology" in the government statements. He states that in this context "owabi" "denotes a sense of apology slightly more weighty than an 'excuse me,' offered when one bumps shoulders with someone on the subway; [b]ut it is an expression with a wide scope for interpretation that can range from a very minor sense of being sorry to 'shazai,' a serious acknowledgement of wrongdoing and proffering of an apology." As the Japanese government has not acknowledged any crime, Professor Yoshimi points out, the Prime Minister's "owabi" can only be interpreted as something trivial.

126. Second, we find it significant that statements of "apology" were not made directly and individually to the survivors and their families or close associates. Instead, they were made to the heads of state of North Korea, South Korea and the Philippines, and to the UN Sub-Commission on the Prevention of Discrimination. Actions in the international arena do not substitute for actions directed to the individuals whose lives are affected by such actions.

127. Finally, we have recognized that the "injury to honour and dignity" was the way the law referred to rape at the time, and we understand the use of the expression to be a veiled reference to rape, the use of such euphemisms is no longer unacceptable.

Continuing Failure to Prosecute and Punish those Criminally Responsible.

128. As already made clear, crimes against humanity are subject under customary international law to universal jurisdiction and are exempt from the effect of any statute limiting the time within which prosecution is permitted. Japan should have initiated prosecutions of those responsible at all levels, as well as those who took advantage of the system.

Continuing Failure to Make Official and Fair Compensation

129. In 1995, in connection with its expression of remorse and atonement and the visit of the UN Special Rapporteur on Violence Against Women Its Causes and Consequences, the Japanese government established the Asian Women's Fund (hereinafter "the Fund") which was intended to make monetary relief available to "comfort women" survivors by raising "atonement" funds from private sources.

130. The Prosecutors contend that the Asian Women's Fund does not satisfy the state of Japan's responsibility to compensate victims for the harm inflicted and note that this attempt to compensate former comfort women ended up infuriating and dividing many of them. Many survivors rejected the offered grant of the Fund on two grounds: it was not accompanied by a genuine apology and the funds came from private and not governmental sources. We note that the survivors' position is confirmed by the conclusion of the UN

Special Rapporteur that the Fund is "a clear statement denying any legal responsibility."

131. As a matter of law, this Tribunal cannot accept privately raised funds in lieu of official compensation in satisfaction of the state obligation, particularly where there is no financial barrier to the state's ability to provide the compensation from the public fisc. The inadequacy of this approach to compensation is further underscored by contrasting it with other victims of the Japanese forced labour program who have been officially compensated by the State. Accordingly, we find that the Asian Women's Fund is not an acceptable mechanism for compensating victims for the wrongs inflicted by the state, and further is a discriminatory one.

Continuing Opposition to Formal Claims for Reparations Initiated by Survivors

132. Opposition by the state of Japan to legal efforts by groups of survivors to obtain acknowledgement of wrongdoing and compensation is further evidence of its failure to discharge its legal responsibility to make reparations. Survivors have pressed their claims in numerous cases in Japanese courts and also before the International Labour Organisation. They have also sought the assistance of two UN Special Rapporteurs. In all these contexts, Japan has both opposed responsibility on legal grounds. It has consistently argued that only the states are parties under international law and individuals have no rights to compensation under international. Alternatively, even if an individual has a right of action, it contends that a series of bilateral treaties between Japan and her neighbouring countries extinguished any potential claim for individual damages. The duty to provide compensation and reparations does not depend, however, upon being enjoined to do so by an adjudicative body. It is a positive obligation. Japan has consistently refused to utilize the occasion of these initiatives to officially acknowledge and settle the survivors' claims.

Failure to Take Measures to Protect the Integrity, Well-being and Dignity of the Human Person.

133. The denial of justice, truth-telling and compensation are all part of Japan's failure to take measures to protect the integrity, well-being and dignity of the human person. In addition, the Tribunal emphasises the continuing failure of Japanese officials consistently to repudiate statements by high-ranking government officials that the "comfort women" were volunteers. We note, for example, the statement in May 1994, from Minister of Justice Nagano Shigeto, which prompted violent protests and though he resigned three days later, the Japanese government did not publicly denounce his statement. We note also note the statements in 1996, of the Education Minister Seisuke Okune and, in 1997, of Chief Cabinet Secretary Kajiyama Seiroku to which the Japanese government made no official response.

Defences to State Responsibility

134. State responsibility can be counteracted by circumstances precluding wrongfulness. Japan has presented specific defences that we now consider. First, Japan takes the position that article 3 of the 1907 Hague Convention does not confer a direct, individual right of compensation, but refers only to obligations incurred between states. While recognising that the Japanese courts have accepted Japan's contention, this Tribunal is not in accord. Rather, based on the negotiating history and the text, this Tribunal accepts the view of Professor Kalshoven and other experts that Article 3 confers an independent indi-

vidual right to compensation.

135. Second, Japan contends that any individual claims that the "comfort women" may have had for compensation have been fully satisfied by its compliance with the peace treaties and international agreements concluded between Japan and the allies and other Asian states following the end of the second world war (the "Peace Treaties"), including payment of lump sums in settlement of outstanding claims.¹

136. This argument raises the question of whether a State has the power to waive the rights and claims of individual victims for the commission of international wrongs against them. We reject this defence and do not accept that either the state of Japan, the Allied powers or the victimised states had such power or authority.

137. The Judges recognise that a directly injured state may waive the responsibility of the wrongdoing state and, as a result, its claim is extinguished. However, as recognised in recent jurisprudence and the International Law Commission's 2001 Draft Articles on State Responsibility, certain obligations are owed to the world community, comprising obligations erga omnes. Crimes against humanity come within this category of obligation making it legally impossible for states to waive the interests of other states through bilateral or multilateral agreements when the violation is deemed to have occurred to all. But beyond that, the people of the world have a compelling interest in accountability for crimes against humanity. The omnes-or all-refers not simply to all states, but also to all people, and, most assuredly, to those who are the direct victims of the violative conduct.

138. The lack of power to waive victims' claims is particularly true here where the wrongs committed against the "comfort women" were never even considered in the process of determining the amount of compensation to be paid under the various Peace Treaties. Rather, for economic and geopolitical reasons the lump-sum agreements were motivated by a desire to limit Japan's financial liability. The wording suggests that this limitation was not envisaged as permanent. Japan's now powerful economic position changes the basis for the obligations of the Peace Treaties in a rudimentary way.

139. Moreover, the political nature of these settlements is starkly apparent. The Allies, and particularly the United States, had as its overarching goal to assure American as opposed to Soviet influence in the region as set forth in an amicus curiae brief urging dismissal of the case of "comfort women" from the Philippines, China, Taiwan and South Korea, filed in the US federal court:

The [San Francisco] Treaty was considered as a part of a package, ... relating to the Pacific region, reflecting the United States' view of the Treaty as an integral part of its political and foreign relations goals in that region..... To that end, the United States actively facilitated and encouraged Japan's efforts to enter into peace treaties and/or claims settlement agreement with non-signatory nations such as China, Korea, Burma and Indonesia.

140. In light of evolving principles of international law, the Tribunal finds that as to crimes against humanity, obligations owed erga omnes, the politically expedient bargains of states cannot extinguish the international legal claims of the victims against the offending state.

141. Finally, we also find that the inherent gender bias underlying the Peace Treaties in that women either as individuals or as a group had no effective voice in the negotiations undermines their legitimacy and any argument that such discriminatory instruments should continue to be respected today.

Conclusion

142. For all the above reasons, we find that the application for state responsibility is valid and that the Japanese government is liable for the harm inflicted by the Japanese military sexual slavery system and by the breach of continuing obligations resulting therefrom.

REPARATIONS AND RECOMMENDATIONS

143. The obligation to make reparation to victims of an internationally wrongful act has long been accepted as "a general principle of international law." That general principle has developed into a legal and not simply a moral duty.

144. The law of state responsibility "requires a state to make reparations when it fails to comply, through an act or omission attributable to it, with an obligation under international law." Moreover, the forms of remedies available from the state are not necessarily discretionary, particularly when the violation is the result of intentional state wrongdoing. This is not a case of a state failing to protect - here the state aggressively and intentionally caused the harm. Thus, "[t]he remedies afforded should reflect the breach of trust involved because, in general, the more outrageous the wrongdoer's conduct, the more outraged and distressed the victim will be and the greater the harm that will be suffered."

145. Finding that reparation constitutes a positive obligation of the state of Japan and should be comprehensive covering all injuries suffered by the victims on account of the original violation and continuing breaches, this Tribunal makes the following recommendations:

Recommendations

146. To fulfil its responsibility, the Tribunal holds that the government of Japan must provide each of the following remedial measures:

- i. Acknowledge fully its responsibility and liability for the establishment of the "comfort system", and that this system was in violation of international law.
- ii. Issue a full and frank apology, taking legal responsibility and giving guarantees of non-repetition.
- iii. Compensate the victims and survivors and those entitled to recover as a result of the violations declared herein through the government and in amounts adequate to redress the harm and deter its future occurrence.
- iv. Establish a mechanism for the thorough investigation into the system of military sexual slavery, for public access and historical preservation of the materials.
- v. Consider, in consultation with the survivors, the establishment of a Truth and Reconciliation Commission that will create an historical record of the gender based crimes committed during the war, transition, and occupation.
- vi. Recognize and honor the victims and survivors through the creation of memorials and a museum and library dedicated to their memory and the promise of "never again."
- vii. Sponsor both formal and informal educational initiatives, including meaningful inclusion in textbooks at all levels and support for scholars and writers, to ensure the education of the population and, particularly, the youth and future generations concerning the violations committed and the harm suffered.

- viii. Support training in the relation between the military slave system and gender inequality and the prerequisites for realizing gender equality and respect for the equality of all the peoples of the region.
- ix. Repatriate survivors who wish to be repatriated.
- x. Disclose all documents or other material in its possession with regard to the "comfort stations."
- xi. Identify and punish principal perpetrators involved in the establishment and recruitment of the "comfort stations."
- xii. Locate and return the remains of the deceased upon the request of family members or close associates.

147. The Tribunal further recommends that the former Allied nations:

- i. Immediately declassify all military and governmental records concerning the establishment and operation of the "comfort" system and the reasons why it was not prosecuted before IMTFE.
- ii. Immediately declassify all military and governmental records concerning the failure to prosecute the Emperor HIROHITO before the IMTFE.
- iii. Acknowledge its own failures to investigate and prosecute the crimes committed against the former "comfort women" initially in the post war trials and since in the intervening 55 years.

148. The Tribunal further recommends that the United Nations and all the states thereof:

- i. Take all steps necessary to ensure that the government of Japan provides full reparations to the victims and survivors and those entitled to recover on account of the violations committed against them.
- ii. Seek an advisory opinion of the International Court of Justice as to the illegality and continuing liability of the government of Japan in regards to the former "comfort stations."

CONCLUSION

149. Repeatedly in history, states have ignored the crimes committed against women in armed conflict. The failure of the Allies to prosecute the unprecedented military sexual slavery and further incidents of rape such as Manzanar denied the victimised women equal access to the law and perpetuated the view that their suffering did not merit equal disapprobation or that they were willing participants. This exclusion from justice contributed to silencing the survivors and impeding their healing.

150. It is our hope that the moral force of this Women's' Tribunal and this Judgement will engage states as well as people of the world to bring Japan to recognise its responsibility to repair these atrocities, to right these wrongs, and to enable future generations to go forward on the basis of respect for women's equality and dignity.

151. The courage of the survivors, their yearning for justice, and their solidarity has inspired a worldwide movement to ensure that such crimes never again be overlooked nor allowed to occur. That crimes against women have begun to be prosecuted in the recently established international criminal tribunals is one of the fruits of their efforts and has laid the foundation for ending impunity for violence against women.

152. In conclusion, through this Judgement, the Judges wish to honour all the women victimized by Japan's military sexual slavery system. We recognize as well the great fortitude and dignity of the survivors who

have reconstructed their lives and testified before us. The crimes committed against these survivors remain one of the great unremedied injustices of the Second World War. There are no museums, no graves for the unknown "comfort woman," no education of future generations, and no judgement days, for the victims of Japan's military sexual slavery. Many of the women who have come forward to fight for justice have died unsung heroes. While the names inscribed in history's page are often those of the men that commit the crimes, rather than the women that suffer them, this Judgement bears the names of the survivors that took the stage to tell their stories, and thereby, for four days at least, put wrong on the scaffold and truth on the throne.

(END)

**Transcript of Oral Judgement delivered on 4 December 2001 by the
Judges of the Women's International War Crimes Tribunal on
Japan's Military Sexual Slavery**