

**THE PROSECUTORS AND THE PEOPLES OF THE  
ASIA-PACIFIC REGION**

**v.**

**HIROHITO EMPEROR SHOWA  
ANDO Rikichi,  
HATA Shunroku,  
ITAGAKI Seishiro,  
KOBAYASHI Seizo,  
MATSUI Iwane,  
UMEZU Yoshijiro,  
TERAUCHI Hisaichi,  
TOJO Hideki,  
YAMASHITA Tomoyuki  
and  
THE GOVERNMENT OF JAPAN**

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**JUDGEMENT**

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**Before: Judge Gabrielle Kirk McDonald, Presiding  
Judge Carmen Argibay  
Judge Christine Chinkin  
Judge Willy Mutunga**

**Delivered: 4 December 2001  
The Hague, The Netherlands**



**THE WOMEN'S INTERNATIONAL  
WAR CRIMES TRIBUNAL**

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**The Women's International War Crimes Tribunal  
for the Trial of Japan's Military Sexual Slavery**

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**Judgement  
on the  
Common Indictment and the  
Application for Restitution and Reparation**

---

**Before:** Judge Gabrielle Kirk McDonald, Presiding  
Judge Carmen Argibay  
Judge Christine Chinkin  
Judge Willy Mutunga

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**APPENDICES**

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**ACKNOWLEDGEMENTS**



## **PART I – INTRODUCTION AND BACKGROUND OF THE PROCEEDINGS**

### **A. BREAKING THE HISTORY OF SILENCE**

1. 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 courageous revelations of the victimised survivors, euphemistically called “comfort women,” inspired hundreds more survivors throughout the Asia-Pacific region to speak out. Together, they have awakened the world to the horror of the Japanese military’s institutionalisation of rape, sexual slavery, trafficking, torture, and other forms of sexual violence inflicted upon girls and women. Robbed of their youth and their future, they were conscripted and trafficked through force, coercion, and deception and confined to “comfort stations” or, more accurately, sexual slavery facilities wherever Japanese troops were situated, including on the front lines.
2. The courage of these survivors has inspired other victims of sexual atrocities to speak out about the crimes committed against them. Human rights advocates, lawyers, and scholars worldwide have mobilised to seek justice. In an extraordinary way, the former “comfort women” have contributed substantially to the emergence of a larger global movement to recognise and respect women’s human rights, to end impunity for crimes of sexual and gender violence, and to repudiate the notion that sexual abuse of women is an inevitable consequence of war and conquest.
3. The Women’s International War Crimes Tribunal 2000 on Japan’s Military Sexual Slavery, convened at the very end of the twentieth century, is the culmination of nearly a decade of work by and on behalf of the victimised survivors and on behalf of the victims who have not survived. The Tribunal was established as a result of the failure of states to discharge their responsibility to ensure justice.
4. Initial responsibility for this failure rests 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 (IMTFE),<sup>1</sup> in the trial held in Tokyo from April 1946 to November 1948, despite the fact that they possessed ample evidence of rape and sexual slavery in the “comfort system.” That a court, especially an internationally constituted court, would deliberately ignore a systematic atrocity of this dimension is unconscionable and profoundly discriminatory.
5. Nonetheless, primary responsibility lies and remains with the state of Japan for its continuing failure over the last 56 years to prosecute perpetrators of all rank, to officially and fully apologise, and to provide reparations and other meaningful remedies for the crimes. This inaction has persisted in spite of repeated demands made since 1990 by the survivors, careful investigations of United Nations Special Rapporteurs, and exhortations of the international community.

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<sup>1</sup> See The Charter of the International Military Tribunal for the Far East, 19 Jan. 1946, 4 Bevans 21, annex to Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, 19 Jan. 1946, TIAS No. 1589, 4 Bevans 20 (IMTFE Charter or Tokyo Charter); Transcripts of the proceedings, as well as document, including the Judgement, are reproduced in *The Tokyo War Crimes Trial: The Complete Transcripts of the Proceedings of the International Military Tribunal for the Far East* (R. Pritchard & S. Zaide eds., 22 vols., 1981) (Tokyo or IMTFE Judgement); see also *The Tokyo Judgement: The International Military Tribunal for the Far East* (B. Roling & C. Ruter eds., 1977) (IMTFE Judgement (Roling)). Both sources are used as references in this Judgement.

6. This Tribunal was established out of the conviction that these failures must not be allowed to silence the voices of survivors nor allow the state of Japan to escape accountability for these crimes against humanity. It was established to redress the historic tendency to trivialise, excuse, marginalise, and obfuscate crimes against women, particularly sex crimes, and even more so when they are committed against women of subordinated ethnicities. This Tribunal was established out of the belief, expressed repeatedly by the brave yet tormented survivors now in the latter stages of their lives, that acknowledging and assigning responsibility for the crimes will help to ensure that they live out their remaining years with greater peace and security; and further, that the state of Japan will come to recognise its responsibility to seek the forgiveness of survivors and to provide them with reparations. This Tribunal is the product of an uncompromising hope that justice is still possible and that such atrocities will never be repeated.
7. The Tribunal emphasises that the Japanese people are not on trial in this forum. Individual accountability as well as state responsibility for violations of international humanitarian law excludes the ascription of collective guilt. The Tribunal has no intention of deviating from this important principle.
8. This is a Peoples' 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 organisation 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. Further, this Tribunal steps into the lacuna left by states and does not purport to replace their role in the legal process. The power of the Tribunal, like so many human rights initiatives, lies in its capacity to examine the evidence, develop an accurate historical record, and apply principles of international law to the facts as found. The Tribunal calls upon the government of Japan to realise that the greatest shame lies not in this recording of the truth about these crimes, but in its failure to accept full legal and moral responsibility for them.
9. Each of the Judges of the Tribunal participate out of profound respect for the collective will of peoples and for the fundamental role of the rule of law in civil society. This Peoples' Tribunal acts 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. In part because of the failure to prosecute the Turkish officials responsible for the genocide against the Armenians in the early twentieth century, Hitler was emboldened to pursue his crimes against the Jews, communists, Roma, gays and others, in the belief that such crimes would not be punished. This principle applies with particular force with respect to fostering accountability for crimes of sexual and gender violence.
10. Sexual violence against women is epidemic. The frequency and brutality of sexual violence against women intensifies in times of war. These proceedings demonstrate that the institutionalisation of sexual slavery of girls and women was an integral part of the Japanese military aggression. Significant progress has been made recently toward prosecuting crimes of sexual violence and recognising their multifarious roles in military strategies. The International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) provide two examples. This Peoples' 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.

11. Throughout the testimony, it was clear that the pain of women who were the victims of sexual violence was exacerbated by the denial of recognition and healing that justice can bring and by the community or familial rejection they were forced to endure purely as a result of the sexual nature of the crimes committed against them. The survivors were forced to suffer physically and mentally in shame and silence as a consequence of sexist attitudes treating them as responsible for the very atrocities they suffered. The findings of the Tribunal are intended to contribute to the proper attribution of responsibility for the crimes, placing it upon the perpetrators and not the victims of the crimes of sexual violence, and, thereby, to assist in changing worldwide patterns of sexual stereotyping which continue to subjugate women in contemporary society.
12. Part I of this Judgement consists of this Introduction and Background, Part II contains the Factual Findings, Part III, the Applicable Law, Part IV, the law of Individual Criminal Responsibility, and Part V provides the Legal Findings and Verdict. Part VI considers State Responsibility, Part VII covers Reparations, and Part VIII contains the Conclusions. Appendices provide the Common Indictment, Charter, and Application for Restitution and Reparations.

#### **B. ORGANISATION OF THE TRIBUNAL**

13. This Peoples' Tribunal was brought into existence by an International Organising Committee (IOC) chaired by representatives from Japan, the Philippines, and South Korea, each of whom has been deeply involved since 1991 in assisting the survivors to give voice to their experiences and to enable these voices to be heard. The goal, as expressed by the organisers at the opening ceremony in Tokyo, is to achieve "not vengeance but justice, . . . not only for the survivors but also for those who have perished and for the generations to come."
14. The indictments and presentations before this Tribunal were prepared by interdisciplinary teams led by legal prosecutors from East Timor, Indonesia, Japan, Malaysia, the Netherlands, North and South Korea (jointly), the People's Republic of China, the Philippines, and Taiwan, all of whom laboured separately and jointly for over two years to bring this Tribunal to fruition. The Country Prosecutors were joined by two co-Chief Prosecutors who have made significant contributions to international accountability for gender violence, and all participants affirmed the commitment of the international community to these proceedings. Each prosecution team submitted a Country Indictment. In addition, each joined, together with the co-Chief Prosecutors, in a composite Common Indictment and an Application for Restitution and Reparations, which instruments are the subjects of the proceedings before this Tribunal.

#### **C. THE CHARTER**

15. The IOC and the Prosecutors drafted the Charter of the Tokyo Tribunal 2000 (Charter), which was approved by the Judges. Article 2 of the Charter gives the Tribunal jurisdiction over crimes against humanity, including but not limited to sexual slavery, rape and other forms of sexual violence, enslavement, torture, deportation, persecution, murder, and extermination. In Article 14, the Charter declares that the Tribunal has an obligation to state clearly, based on the evidence presented, whether each accused is guilty, not guilty, or whether there is insufficient evidence upon which to make such a determination. The latter provision was adopted taking account of the Japanese

destruction and concealment of documents pertaining to the crimes charged as well as the continuing investigation of responsibility of which this Tribunal is but one step.

16. Through the Common Indictment, the Prosecutors call upon this Tribunal to determine the criminal responsibility of various high ranking officials of the Japanese government and military, including Emperor HIROHITO, for sexual slavery and rape as crimes against humanity. None of the accused has previously faced charges arising from the existence of the system of sexual slavery during the Asia-Pacific Wars of the 1930s and 1940s or from the rapes at Mananque. As previously stated, this Tribunal was established to adjudicate gender related crimes that the IMTFE, the original Tokyo Tribunal, failed to redress.
17. The Charter also grants the Tribunal jurisdiction over breaches of state responsibility flowing from the commission of international wrongs attributable to the state of Japan. In this way, the Tribunal is uniquely situated to consider both individual criminal responsibility and state responsibility. Article 4 of the Charter recognises that international wrongs committed by Japan arise both from the original crimes against humanity and from its subsequent failures to repair them as required by international law. The international wrongs include discrimination, concealment or failure to find and disclose the truth concerning international crimes, failure to prosecute and provide reparations, failure to take measures to protect the integrity, well being, and dignity of the human person, and failure to take the necessary measures to prevent recurrence.
18. Article 14 of the Charter authorises the Tribunal to make recommendations regarding the responsibility of persons and states to afford redress through such means as offering an official apology, restitution, compensation, and rehabilitation, to those whose rights have been violated.

**D. THE COMMON INDICTMENT AND THE APPLICATION REGARDING STATE RESPONSIBILITY**

19. The Prosecutors filed eight Country Indictments and one Common Indictment. The Judges note that the Country Indictments list names of some accused who are not included in the Common Indictment.<sup>2</sup> Because the Common Indictment reflects a consolidation of the positions of the Country Prosecutor teams for the purposes of these abbreviated proceedings, this Tribunal will determine the criminal responsibility only of the accused who are listed in the Common Indictment.
20. In the Common Indictment, the Prosecutors have charged the following accused with the crimes against humanity of rape and sexual slavery pursuant to Article 2 of the Charter of the Tribunal: Emperor HIROHITO, ANDO Rikichi, HATA Shunroku, ITAGAKI

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<sup>2</sup> By agreement of the prosecutors to focus the attention of this proceeding on the common defendants, the charges contained in country indictments against the following additional high-ranking defendants will not be considered in this Judgement: Tani, Hisao (China), Nakajima, Kesago (China), Prince Asakanomiyama Yasuhiko (China), Okamura, Yasuji (Korea)(China), Harada, Kumakichi (Indonesia), Dohihara, Kenji (Indonesia), Takahashi, Ibo (Indonesia), Okouchi, Denshichi (Indonesia), Ushijima, Mitsuru (Japan), Hongo, Yoshio (Japan), Cho, Isamu (Japan), Kondo, Nobutake (Japan), Kato, Kyo hei (Japan), Morioka, Jiro (Japan), Arita, Hachiro (Japan), Minami, Jiro (Korea), Matsuyama, Yuzo (Korea) Homma, Masaharu (the Philippines), Kuroda, Shigenori (the Philippines), Hasegawa, Kiyoshi (Taiwan)(Malaysia).

Seishiro, KOBAYASHI Seizo, MATSUI Iwane, TERAUCHI Hisaichi, TOJO Hideki, and UMEZU Yoshijiro.<sup>3</sup>

21. 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. The Prosecutors allege that under the system of sexual slavery, high-ranking Japanese officials accused caused thousands of women and girls to be enslaved and subjected to pervasive mental and physical violence, including rape and other forms of sexual torture, mistreatment, and death.<sup>4</sup>
22. 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 Mapanique in the Philippines on November 23-24, 1944. This rape is included as an example of the many incidents of the Japanese military’s mass rape of women of local populations which were not tried before the IMTFE; it is also before this Tribunal because survivors of Mapanique, inspired by the courage of “comfort women” survivors, spoke out and joined the quest for justice and healing.
23. The Prosecutors request that the accused be found guilty under Article 3 of the Charter, which identifies two standards of responsibility. The first, Article 3(1), provides for individual responsibility where the accused planned, ordered, instigated, committed, or otherwise aided or abetted the rapes and sexual slavery. In addition, Article 3(2) provides that the accused may be found responsible for certain crimes committed by their subordinates that they as high-level commanders and superiors failed to prevent, halt, or punish. The Prosecutors allege that the evidence shows that each accused:
 

planned, participated in and/or condoned or omitted to act in regard to the illegal system of military sexual slavery perpetuated through the comfort stations from 1937 through 1945. In addition, each defendant is also responsible for the rapes perpetrated against the comfort women in perpetuation of the system of comfort stations.<sup>5</sup>
24. In addition to the Common 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 responsibility for the alleged crimes 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, provide reparations, and take other measures to remedy the original wrongs.<sup>6</sup>

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<sup>3</sup> The names of both accused and witnesses are spelled and arranged according to the native practice of their particular nationality, so inconsistency in usage in this Judgement is due to attempts to refer to a person in the way in which they would normally be referred to depending on their nationality. This Judgement omits, however, the accents used in original language because of the tendency of such accents to corrupt in the English text, particularly when transmitted electronically.

<sup>4</sup> Common Indictment, para. 40.

<sup>5</sup> Common Indictment, para. 48.

<sup>6</sup> Charter of the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, Article 4 (b) (ii) and (iii).

## E. STANDARD OF PROOF

25. The Charter of this Tribunal is silent regarding the standard of proof to be applied in assessing responsibility under the Common Indictment. Accordingly, the Judges are tasked with determining the appropriate standard of proof based on international legal norms and precedents applicable to the crimes committed in 1937-1945. Our analysis stems from a commitment to the principle that individuals have a right to be presumed innocent until proven guilty. From this right flows the universal rule that the guilt of the accused must be proved. We note that under international law, the standard of proof is not specified in international legal instruments, with the exception of Article 66(3) of the Rome Statute of the International Criminal Court (ICC Statute), which provides: “In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.” While the post-war Tribunals did not often articulate the standard applied, we note that the Nuremberg Tribunal did so on occasion. For example, it found the defendant Schacht not guilty as charged because the evidence provided by the prosecution was not sufficient to establish his guilt “beyond a reasonable doubt.”<sup>7</sup>
26. The Human Rights Committee has subsequently affirmed, in General Comment 13, that,
- by reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt.<sup>8</sup>

Accordingly, this Tribunal adopts the position that, to find an accused guilty, it is necessary for the Prosecutors to prove “beyond reasonable doubt” that the accused committed the necessary *actus reus* and possessed the requisite *mens rea* of the crimes alleged.

27. Article 14(2) of this Tribunal’s Charter provides that the Judges may decide that an accused is guilty, not guilty, or that there is “insufficient evidence available to the prosecutors” upon which to make such a finding. This latter option would be an unusual procedure for formal legal systems that espouse the presumption of innocence. Most formal legal systems provide only two choices: guilt or innocence. But here, the Judges recognise the wisdom of the authority granted to us by the Charter’s third alternative. This is appropriate because this is a Peoples’ Tribunal with the purpose of discovering the truth and pronouncing upon the responsibility of those who are accused. As discussed in Part VI, the capacity of this Tribunal to discover the truth is limited by the massive destruction of documents carried out by the Japanese military in conjunction with its surrender and by the continued concealment of pertinent information by the state of Japan and the World War II Allied states. A purpose of this Judgement is to alert states, including Japan and the Allied states, to the violations and to the responsibility to provide reparations and, as part of that, to reveal the truth. The Judgement is thus a piece of the historical record that will always be incomplete and is still being withheld. And finally, as this Tribunal has no capacity to punish or compel, we find it appropriate to consider the third option – a pronouncement of insufficient evidence in lieu of a finding of not

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<sup>7</sup> IMT Judgement, p. 137.

<sup>8</sup> Human Rights Committee, General Comment 13, para. 7.

guilty. We note that on two occasions the IMTFE also declined to make a finding of guilt or innocence as to particular counts of the Indictment.<sup>9</sup>

28. Notwithstanding that the record available is partial due to the deliberate destruction or nondisclosure of documents by the state of Japan and other governments, the Judges consider that the fundamental presumption of innocence must be adhered to in this proceeding. Accordingly, we can find an accused guilty only if guilt is proved beyond a reasonable doubt. At the same time, the Charter enables us to balance the rights of the victims against the rights of the accused and thus, we may deem it inappropriate to declare an accused “not guilty” when evidence strongly suggests, but does not conclusively prove, culpable conduct.

#### **F. THE ACCUSED**

29. The accused in this case held some of the highest level positions in the Japanese government and military during the war. The information below is simply a summary of the highest levels of authority that the accused held during 1937-1945, the time period covered by the Common Indictment.
30. HIROHITO Emperor Showa was the Head of State of Japan and Supreme Commander of the Armed Forces. His political powers were independent of and superior to the legislative, judicial, and administrative powers of the Japanese government. The Prime Minister, Ministry of War, Home Ministry, and other cabinet members were bound by the Meiji Constitution to advise HIROHITO about domestic and international political relations and military operations of Japan and the Governors-General of Taiwan and Korea reported directly to him.
31. ANDO Rikichi was the Commander of the 21<sup>st</sup> Army from November 1938 to February 1940 and Commander of the South China Area Army from February to October 1940. He also served as Commander of the Taiwan Army from November 1941 until February 1945. From December 1944 until the end of the war, ANDO was the Governor General of Taiwan.
32. HATA Shunroku acted as the Commander of the Taiwan Army from August 1936 until August 1937 and as Commander of the Central China Expeditionary Army in 1938. After serving as the Minister of War from August 1939 to July 1940, HATA was appointed, in March 1941, to the position of the Commander of the China Expeditionary Army until November 1944.
33. ITAGAKI Seishiro served as the War Minister between June 1938 and August 1939. He was thus directly responsible to the Emperor. ITAGAKI was appointed as the Chief of Staff of the China Expeditionary Force from August 1939 until July 1941. He also acted as Commander of the Korea Army from July 1941 until April 1945 when he began serving as the Commander of the 7<sup>th</sup> Area Army stationed in Southeast Asia.
34. KOBAYASHI Seizo was Governor-General of Taiwan from 1936 until 1940. In this capacity and when he acted as cabinet minister from December 1944 until March 1995, KOBAYASHI reported to the Emperor.

<sup>9</sup> The IMTFE Judgement made “no finding” as to Count 55 for Dohihara Kenji (at Verdict, p. 49,779) and ITAGAKI Seishiro (at Verdict, p. 49,800).

35. MATSUI Iwane held the position of Commander of Shanghai Expeditionary Army and Central China Area Army for seven months during 1937 and 1938.
36. TERAUCHI Hisaichi was the Commander of the North China Area Army from August 1937 until December 1938 and, from November 1941 until the end of the war, he was Commander of the Southern Expeditionary Army in Philippines, Indonesia, Malaysia, Timor, and Burma. He was also Minister of War from March 1936 until February 1937 when he was appointed the Inspector-General of Military Education.
37. TOJO Hideki was Chief of Staff of the Kwantung (Guangdong) Army in 1937; in May of the following year, he became the Vice-Minister of War. From October 1941 to July 1944 he held the positions of Prime Minister and War Minister, and during this period he held the position of Home Minister for some time. As Prime Minister, TOJO was in a position and had a duty to review and report to the Emperor the actions of all governmental ministries involved in the war effort. From February until July 1944, TOJO also served as Chief of General Staff of the Army.
38. UMEZU Yoshijiro was the Vice Minister of War from March 1936 until May 1938 when he became the Commander of the 1<sup>st</sup> Army in May 1938. After serving as Commander of the Kwantung (Guangdong) Army from September 1939 until July 1944, UMEZU was appointed Chief of General Staff of the Army in July 1944.
39. YAMASHITA Tomoyuki served as Commander General of the 14<sup>th</sup> Area Army from September 1944 to September 1945. In this capacity, he directed and was responsible for Japanese troops operating in the Philippines, including the area of Mapanique.

**G. NOTICE TO JAPAN AND PROCESS FOR CONSIDERATION OF DEFENCES**

40. The Registry of this Tribunal served the Prime Minister of Japan with notice of these proceedings, including an invitation to participate in the proceedings, on November 9, 2000 and November 28, 2000. The Judges regret the lack of response by the Japanese government to this invitation. Although this Tribunal is not an official court of law, the Judges bear in mind the approach of the International Court of Justice in circumstances where both parties do not take part in proceedings before it. Article 53 of the Statute of the International Court of Justice provides: "Whenever one of the parties does not appear before the Court, or fails to defend his case, the other party may call upon the Court to decide in favour of its claim."<sup>10</sup>
41. In fulfilling its mandate to discover the truth, this Tribunal declines to enter a summary or default judgement on behalf of the complainants and will instead endeavour to consider all defences the accused might conceivably raise on their own behalf had they agreed to participate.
42. Accordingly, in the interests of justice and fairness, the Tribunal will consider the anticipated arguments of the individual accused and of the Japanese government. To this end, we requested that the anticipated arguments of Japan be compiled by an attorney assisting us as *amicus curiae* (or "friend of the court") and we are very grateful for the *amicus curiae* brief submitted by Imamura Tsuguo in response to this request.<sup>11</sup> We will

<sup>10</sup> Statute for the International Court of Justice, 3 Bevans 1153, 26 June 1945, Article 53. See also Articles 36 and 37.

<sup>11</sup> Exhibit 1, *Amicus* Brief, Imamura Tsuguo. We appreciate also the additional *Amicus Curiae* Brief submitted by Suzuki Isomi, Exhibit 226.



also consider arguments advanced by the Japanese government in cases pending before its courts,<sup>12</sup> and the responses of the Japanese government to the reports of UN Special Rapporteurs who have investigated and condemned the “comfort women” system.<sup>13</sup>

## H. THE PROCEEDINGS

43. The Tribunal sat in Tokyo from December 8 until December 10, 2000 and took testimony of survivors, experts, and perpetrators. On December 12, 2000 the Tribunal orally issued its Preliminary Findings. Sixty-four survivors were present at the proceedings of the Tribunal, seeking justice not only for themselves but also for an indeterminable number of girls and women who did not survive or who continue to live in silence. Some of the survivor-witnesses testified in person and, because of the limited time allotted to the prosecution teams, still more gave testimony through videotape and affidavit, some of whom also appeared in the proceedings. All presenting live testimony were sworn in by the Registrar and made an oath to testify truthfully and those present whose testimony was presented by video also affirmed the truth of their statements. During the course of the trial, the Tribunal heard testimony of the most horrific and inhumane treatment, surpassing imagination, giving rise to the question of how human beings can act so inhumanly, and underscoring the violence to which gender, racial/ethnic discrimination and war can lead.
44. In addition to the testimonies of the victim-survivors, the Tribunal heard and received in written form the testimonies of historians, of legal experts and psychologists, and of two former Japanese soldiers who testified about their participation in rape crimes and in the “comfort women” system. The Tribunal received documentary evidence from memoirs of officials involved in the war and from the limited official documentation available to the public. The Tribunal considered a small number of documents which, having survived the Japanese military’s pre-surrender destruction of documents, had been discovered by researchers or voluntarily released by the government of Japan or other states.

<sup>12</sup> See, e.g., The Case of Hainan Island “comfort women” seeking written apology, etc., the 24<sup>th</sup> Civil Department of Tokyo District Court, Docket No. (wa) 14808 of Heisei 13 nen (2001); The Case of Taiwanese “comfort women” claiming compensation and written apology, Panel of Judges, the 26<sup>th</sup> Civil Department of Tokyo District Court, Docket No. (wa) 15638 of Heisei 11 nen (1999); The Case of victims of sexual violence in Shan-xi Province, China, claiming compensation, etc., The 44<sup>th</sup> Civil Department of District Court, Docket No. (wa) 24987 of Heisei 10 nen (1998); The Case of Chinese “comfort women” claiming compensation, etc. (2<sup>nd</sup> group), The 10<sup>th</sup> Civil Department of Tokyo District Court, Docket No. (wa) 3316 of Heisei 8 nen (1996); The “koso” appeal Case of Chinese “comfort women” claiming compensation, etc. (1<sup>st</sup> group), The 5<sup>th</sup> Civil Department of Tokyo High Court, Docket No. (ne) 3775 of Heisei 13 nen (2001) (original claim dismissed at the 23<sup>rd</sup> Civil Department of Tokyo District Court on 30 May 2001); The “koso” appeal case of Korean victims of the Asia-Pacific War claiming reparations, The 16<sup>th</sup> Civil Department of Tokyo High Court, Docket No. (ne) 2631 of Heisei 13 nen (2001) (including Kim Hak-sun and seven other women) (original claim dismissed by Tokyo District Court on 26 March 2001); The Case of Pusan “comfort women” and Women’s Labour Corps members claiming official apology, etc. (claim dismissed on 29 March 2001 by Hiroshima High Court (reversing the decision of Shimonoseki Branch, Yamaguchi Dist. Court of 27 April 1998)); The Case of Dutch POWs and civilian detainees claiming compensation (koso-appeal dismissed by Tokyo High Court on 11 Oct. 2001); the “jokoku” Appeal Cases of Philippino “comfort women” claiming compensation, the 1<sup>st</sup> Petty Bench of the Supreme Court, Docket Nos. (o)949, 950 of Heisei 13 nen (2001) – (ju) 930,931 of Heisei 13 nen (2001) (koso-appeal dismissed by Tokyo High Court on 6 Dec. 2000); The “jokoku” Appeal Case of SONG Shin-do claiming apology, etc., the 2<sup>nd</sup> Petty Bench of the Supreme Court, Docket Nos (o)315 of Heisei 13 nen (2001) – (ju) 302 of Heisei 13 nen (2001) (Korean resident in Japan) (koso-appeal dismissed by Tokyo High Court on 30 Nov. 2000).

<sup>13</sup> See, e.g., Report of the Special Rapporteur on Violence against Women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission Resolution 1997/44, UN Doc E/CN.4/1998/54, 26 January 1998; Final Report of the Special Rapporteur on Systematic rape, sexual slavery and slavery-like practices, Ms. Gay J. McDougall, to the UN Economic and Social Council, E/CN.4/Sub.2/1998/13, 22 June 1998 (hereinafter, McDougall Final Report).

45. The Tribunal appreciates the courage and dignity of the survivors who offered their eloquent testimony as well as the impressive efforts of the Prosecutor teams who provided the evidence in a comprehensive, effective, and professional manner. The Tribunal also appreciates the former soldiers' willingness to testify as well as their candour in recounting their own criminal activity and that of their fellow soldiers, officers, and subordinates. Appreciation is also due to the legal experts and to the historian experts, who have uncovered and analysed with extreme care the surviving documents, and to the psychological experts who have devoted their attention to healing and to revealing here the traumas of rape, sexual slavery, and other forms of sexual violence.<sup>14</sup> Appreciation is also due to those who provided support to the survivor-witnesses in the preparation and presentation of their painful testimonies, and to the translators who worked tirelessly for many months to enable these proceedings to be understood by all.
46. The evidence before this Tribunal is but a small portion of the documentary, scholarly, and historical evidence available that illuminates the violations of and damage to the former "comfort women." Because this is a Peoples' Tribunal, we may on occasion refer to other material to more fully contribute to the historical record engendered by these proceedings, but information outside the official record will be relied upon only insofar as it confirms existing evidence and will not be taken into account in relation to assessing the guilt of the accused.

## **I. THE POTENTIAL ARGUMENTS OF THE ACCUSED AND THE JAPANESE GOVERNMENT**

### ***1. Arguments Concerning Criminal Responsibility Under the Common Indictment***

47. Before considering the facts and making our findings, the Tribunal summarises the anticipated arguments of the state of Japan with respect to the criminal responsibility of the accused under the Common Indictment. The arguments not disposed of here will be considered in greater depth in the appropriate sections of this Judgement.

#### ***(a) Lack of Jurisdiction***

48. The Tribunal notes that its jurisdiction is not recognised by the state of Japan. Japan maintains that jurisdiction to adjudicate is ancillary to the sovereignty of a state and belongs only to states and/or international organisations recognised by states as authoritative adjudicators. On this basis, it might claim that this Women's Tribunal has no international legal standing and thereby lacks the power to prosecute individuals. The lack of jurisdiction claim is also made regarding the Application for Restitution and Reparations.

#### ***(b) Denial of Due Process***

49. All criminal defendants have the right to a fair trial.<sup>15</sup> This includes the right to defend oneself in person or through counsel,<sup>16</sup> to be presumed innocent,<sup>17</sup> and to call and examine

<sup>14</sup> This Judgement will footnote the documents relied on as well as the testimony or submission of experts. We have quoted extensively from the testimony of survivors but we do not include transcript cites thereto.

<sup>15</sup> Article 10 of the Universal Declaration of Human Rights (UDHR).

<sup>16</sup> Article 11(1) of the UDHR; Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR).

<sup>17</sup> Article 14(3)(d) of the ICCPR.

witnesses.<sup>18</sup> An *amicus* argues that prosecuting posthumously defendants who cannot be present at trial and cannot present their defence violates due process rights. In support, the *amicus* points to the Criminal Procedure Law of Japan that prohibits the continuation of a trial once a defendant is deceased.<sup>19</sup>

(c) *Non-Applicability of the Laws of War to the Annexed Territories*

50. The Japanese government has argued in other fora that the sexual slavery of the “comfort women” does not give rise to legal responsibility because the victims were not nationals of a belligerent state. It asserts that the laws of war only apply to conduct committed by the Japanese military against nationals of a belligerent state and do not apply to Japanese persons or persons of colonised countries, like Korea and Taiwan.<sup>20</sup> The Tribunal need not address this argument applicable only to the Japanese, Korean, and Chinese “comfort women” as the Indictment does not charge violations of the laws or customs of war but only crimes against humanity. Crimes against humanity can be committed against any civilian population, including nationals of the perpetrator state.

(d) *Violation of the Non-Retroactivity Principle — Nullum Crimen Sine Lege*

51. The Tribunal notes that the accused may not be tried for acts that were not crimes at the time that the acts were committed. This principle expressed in Latin as *nullum crimen sine lege*, also known as the principle of legality, is a fundamental principle of criminal law that prevents retroactive application of the law.<sup>21</sup> The principle protects against punishing a person who has not had notice that his or her actions are illegal at the time the acts are committed. In this case, the Common Indictment charges the accused with rape and sexual slavery as crimes against humanity. The accused could conceivably assert that these proceedings violate the principle of legality because crimes against humanity were newly recognised and defined by the Nuremberg and IMTFE Tribunal’s Charter, and thus their actions did not constitute crimes at the time of their commission.
52. With regard to the sexual violence charged as crimes against humanity, the Japanese government has also argued in other contexts that rape during armed conflict was not prohibited by the Regulations annexed to the Hague Convention No. IV of 1907, or by applicable international customary norms in force at the time the acts were committed. Japan has also argued that the 1929 Geneva Convention is not applicable because Japan was not a signatory and that Convention was not evidence of custom. Additionally, with regard to the charge of sexual slavery, Japan might maintain that the crime of sexual slavery or enslavement does not accurately describe the “comfort station” system and, in any event, that the prohibition against slavery was not established as a customary norm under applicable international law at the time of the crimes alleged in the Common Indictment. It might further assert that when Japan ratified the 1921 Convention on Suppression of the Traffic in Women and Children, it exercised its prerogative to declare that Korea and Taiwan were not within the scope of the Convention.

<sup>18</sup> Article 14(3)(e) of the ICCPR.

<sup>19</sup> Exhibit 1, Amicus Brief, Imamura Tsuguo, p.2, Item #4.

<sup>20</sup> Japan submitted a paper as an official U.N. document titled “Japan’s policy on the issues of violence against women and ‘comfort women’” (E/CN.4/1996/137) on 27 March 1996. The document contested the Report written by Special Rapporteur Radhika Coomaraswamy; Views of the Government of Japan on the Addendum 1 to the report of the Special Rapporteur on Violence against Women, E/CN.4/1996/53/Ass.1 (hereinafter “Views of Japan”).

<sup>21</sup> Article 15 of the ICCPR; Andrew Ashworth, *Principles of Criminal Law* (1991) pp. 59-60.

(e) *Violation of Double Jeopardy*

53. No one can be tried or punished more than once for the same crime or for a crime based on the same underlying conduct.<sup>22</sup> Many of the accused might contend that because they have already been tried for crimes based on their activities during World War II, the Tribunal lacks legal authority to try them again for crimes committed during the war. As previously noted, the sexual violence crimes charged here were not prosecuted before the IMTFE or its related military tribunals.

(f) *Lack of Criminal Responsibility of Commanders or Other Superiors*

54. An *amicus curiae* asserts that criminal liability requires that the accused have the mental intent to commit rape and sexual slavery and that they had the ability to prevent the crimes. The *amicus* argues that the accused in this case were not aware of the extent to which the women were forced to provide sexual services or that the women were maintained under conditions amounting to slavery. Alternatively, it contends that even if the accused had the requisite knowledge, they had no real power to prevent or stop the situation.<sup>23</sup>

(g) *Non-Coerciveness of the "Comfort System"*

55. Some members of the Japanese government have contended that the "comfort women" were not forcibly recruited and held as sex slaves under conditions of enslavement, but were instead voluntary prostitutes who were paid for their services and were free to return home when their contracts expired.<sup>24</sup>

(h) *Immunity of Emperor HIROHITO*

56. An *amicus* argues that the Emperor of Japan enjoys absolute immunity under international law and the Constitution in force during the war. Further, it asserts that the negative consequences to Japanese society resulting from trying and holding Emperor HIROHITO accountable for crimes committed during the Asia-Pacific Wars makes it imprudent for the Tribunal to prosecute him, because the Emperor is the "symbol of the State and the unity of the people."<sup>25</sup> It is also claimed that he had no real power, as he was merely a figurehead and, therefore, cannot be held responsible.

<sup>22</sup> Article 14(7) of the ICCPR. This principle does not include situations such as "hung juries" in which jurors are unable to reach agreement as to the guilt or innocence of an accused, in which case the accused is sometimes, but not always, retried before a differently constituted jury.

<sup>23</sup> Exhibit 1, Amicus Brief, Imamura Tsaguo, p. 3.

<sup>24</sup> Exhibit 1, Amicus Brief, Imamura Tsaguo, p. 2, Item #4.

<sup>25</sup> Exhibit 1, Amicus Brief, Imamura Tsaguo, p. 3; Exhibit 219, Chronological list of remarks; Yoshimi Yoshiaki, *Comfort Women: Sexual Slavery in the Japanese Military During World War II (1995)* (Yoshimi, *Comfort Women*.)

## 2. *Arguments Concerning State Responsibility: The Application for Restitution and Reparations*

57. Beginning in 1992, the government of Japan and various officials therein began to recognise, in general terms, the coercive nature of the “comfort system” and admitted that the government was involved in establishing the system.<sup>26</sup> Despite these admissions, the Japanese government has put forward various arguments in other fora regarding its lack of responsibility to compensate victims for the Japanese military sexual slavery during the war. Some of these arguments are the same as those listed above relating to the authority of the Tribunal to try the accused for these crimes. Other arguments specifically relate to state responsibility. Among the arguments not already outlined above, and which will be considered *infra*, are the following:

### (a) *Statute of Limitations*

58. The state of Japan might assert that any civil or criminal cases concerning the activities of the Japanese military during the Second World War are now time-barred and that it is too late to bring a claim for either individual or state responsibility.

### (b) *No Individual Standing to Claim Reparations*

59. Japan has asserted in other contexts that individual “comfort women” have no right to reparations since individuals have no standing under international law to bring claims against the state. It further contends that while Article 3 of the Hague Convention No. IV of 1907, which was ratified by Japan, obligates state contracting parties to pay indemnity for violations, it does not provide individuals with a right of action.

### (c) *Individual Claims Settled by the Peace Treaties*

60. Japan has also asserted that whatever individual claims the survivors may have had for compensation or other reparations, they were fully satisfied and extinguished by peace treaties and international agreements reached between Japan and the Allies as well as other Asian states following the end of the Second World War. The position of the Japanese government is further that it has diligently fulfilled all its obligations under the treaties.<sup>27</sup>

61. Additionally, while denying any legal obligation to provide reparations, the government of Japan may assert that it has fulfilled its “moral” obligation through its facilitation of and contributions to the Asian Women’s Fund, established in 1995.

62. The arguments not disposed of above will be considered in the pertinent sections of the Judgement on the Common Indictment and the Application for Restitution and Reparations.

<sup>26</sup> See Exhibit 219, Chronological list of remarks.

<sup>27</sup> See Exhibit 218-a, p. 2, Postwar responsibilities by Etsuro, Totsuka.

## J. THE LEGAL AND MORAL BASIS OF THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL

### 1. *The History of Peoples' Tribunals*

63. The Women's International War Crimes Tribunal is not the first Peoples' Tribunal – it is built upon prior examples, such as the Vietnam War Crimes Tribunals instituted by Lord Bertrand Russell in the late 1960s.<sup>28</sup> The Russell Tribunal passed a just condemnation upon the horrific practices that occurred within Vietnam perpetrated by the governments and militaries of the United States of America, South Korea, New Zealand and Australia during the Vietnam War. The leading motivation behind the creation of the Russell Tribunal was dissatisfaction with the inadequacies of legal processes within the sovereign states to deal with the atrocities of war occurring within Vietnam. The Tribunal's establishment also was influenced by the European intellectual leadership of Lord Bertrand Russell and Jean-Paul Sartre, who were similarly dissatisfied with international responses, including the response of the United Nations, to the atrocities.<sup>29</sup>
64. Another example of a Peoples' Tribunal is the permanent Peoples' Tribunal established in Italy in the 1970s by "private citizens of high moral authority" from a number of countries.<sup>30</sup> This Tribunal has a continual existence over a number of years and has examined a series of alleged violations of international law to which there have been inadequate official response, including the Soviet military intervention in Afghanistan, that of Indonesia in East Timor, and the Turkish genocide of the Armenians. Reports are published based on the findings of the Tribunal and the application of international law to those findings. The reports provide a valuable alternative source of evidence and jurisprudence around contested applications of international law.<sup>31</sup>
65. Peoples' Tribunals are premised on the understanding that "law is an instrument of civil society"<sup>32</sup> that does not belong exclusively to governments whether acting alone or in conjunction with the states. Accordingly, where states fail to exercise their obligations to ensure justice, civil society<sup>33</sup> can and should step in. As seen in the examples of the earlier Tribunals, civil society is not constrained by state boundaries but inspired by common shared values that extend across borders. The Tribunal recalls the words of

<sup>28</sup> Against the Crime of Silence: Proceedings of the International War Crimes Tribunal (John Duffet ed., 1970). The tribunal met in three sessions in 1966-1967 to consider the United States responsibility for war crimes in Vietnam. An important predecessor to this Tribunal was the International Tribunal on Crimes Against Women, held in Brussels, Belgium from March 4-8, 1976. See The Proceedings of the International Tribunal on Crimes Against Women (Diana E.H. Russell and Nicole Van de Ven eds., 1976.)

<sup>29</sup> The words of Jean-Paul Sartre in his inaugural statement to the Russell Tribunal in 1967 bear this out: "That the United Nations, considering all the consequences of what had just been achieved, would, by a vote of the General Assembly, have consolidated it into a permanent tribunal, empowered to investigate and to judge all accusations of war crimes, even if the accused should be one of the countries that had been responsible for the sentencing."

<sup>30</sup> Richard Falk, The Rights of People (in Particular Indigenous Peoples), in The Rights of Peoples (James Crawford ed., 1988), p. 28.

<sup>31</sup> Started in June 1979, the Permanent Peoples' Tribunal is by statute an organ of the Lelio Basso International Foundation; it is historically connected to the Russell Tribunals I and II (opinion tribunals), differing, however, in that its main research is in the field of the "law for the rights of peoples". The norms of this law are not established by states but by the requirements and exigencies of peoples, and the law according to which the Peoples' Tribunal judge derives from facts and the examination of reality, so as to pass "sentences" which strike, in a legal form, those responsible for the violation of such rights. The Permanent Peoples' Tribunal is permanent and is characterised by the ideological pluralism of the members of the jury selected on the basis of their moral, academic, and literary qualities.

<sup>32</sup> Falk, The Rights of People, p. 29.

<sup>33</sup> For what constitutes civil society, see Mutunga, Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992-1997 (1999), Chapter 2.

Shridath Ramphal and Ingvar Carlsson, co-chairs of the Commission on Global Governance:

[N]ation-states find themselves less able to deal with the array of issues – some old, some new – that face them. States and their people, wishing to control their destinies, find they can only do so only by working together with others. They must secure their future through the commitment to common responsibility and shared effort; [what] is also new is the role of people and the shift of focus from states to people. An aspect of this change is the growth of international civil society. These changes call for reforms in the modes of international co-operation – the institutions and processes of global governance. The international system that the UN Charter put in place needs to be reviewed. The flaws and inadequacies of existing institutions have to be overcome. There is [a] need to . . . . enabl[e] citizens to exert their democratic influence on global processes.<sup>34</sup>

66. To ignore violative conduct is to invite its repetition and sustain a culture of impunity. Such culture exposes the system to corruption and destruction by its own agency. That a Peoples' Tribunal's power is limited to exercising moral authority is due to the continued grip of the state on the formal institutions of international law. These institutions are beginning to grant non-state actors a limited right of standing, for example through the admission of *amicus curiae* briefs. The Statute of the International Criminal Court also recognises the right of victims to participate in the proceedings.<sup>35</sup> Formal international legal opportunities are, nonetheless, limited and it is through Peoples' Tribunals that the voices of international civil society can be most strongly heard.
67. Legal responses to atrocities have given rise to innovative international and national proceedings over the past decade, particularly through international criminal tribunals and truth and reconciliation commissions. Peoples' Tribunals take their place among these responsive processes. 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.<sup>36</sup>
68. A Peoples' Tribunal can step in to fill lacunae in international law and to forge new ground in the development of international law by creating a "law of peoples" arising from principles of humanity and justice. John Rawls has contrasted traditional international law with the "law of peoples":

I note the distinction between the law of peoples and the law of nations, or international law. The latter is an existing, or positive, legal order, however incomplete it may be in some ways, lacking, for example, an effective scheme of sanctions such as normally characterises domestic law.

<sup>34</sup> Foreword, Report on Global Governance (1995).

<sup>35</sup> Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998, Article 68(3) (hereinafter ICC Statute).

<sup>36</sup> It remains the task of global civil society to ensure that the Judgement of the Tokyo Tribunal 2000 is disseminated and implemented. Civil society in the country of origin and in the countries of the World War II Allies and victims have a particular obligation to ensure that pressure is exerted upon the Japanese government to provide reparations. For example there is no reason why Japanese civil society, through mass action and civil disobedience and other forms of advocacy and activism, cannot pressure the Japanese to admit the truth and to provide remedies for the "comfort women." Ultimately, the implementation of the judgements of Peoples' Tribunals rests on civil society and not on national or international institutions.

The law of peoples, by contrast, is a family of political concepts with principles of right, justice, and the common good, that specify the content of a liberal conception of justice worked up to extend to and to apply international law.<sup>37</sup>

69. While recognising our authority as a Peoples' Tribunal to fashion the "law of peoples," we nonetheless consider our jurisdiction confined by the law of states as of the time of the violations charged herein and as it has evolved with respect to state responsibility. We do so in order to assure that the state of Japan cannot evade the force of our Judgement on ground of *nullum crimen sine lege* or on the non-applicability to it of the legal principles expressed here.
70. Fresh approaches to international law can go a long way to giving international law increased legitimacy, especially in areas where state sovereignty operates to obstruct the just condemnation of unjust practices. The sovereignty of the people of the world, the voice of global civil society, is the source of the supreme law because states are not the authors of their own power and law. The essence of the concept of sovereignty is that sovereignty comes from the people, not the state, nor an elite class of privileged social groups.<sup>38</sup> The state must serve the interests of the people. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, for example, in their clauses on political participation, assume that sovereignty belongs to the people.<sup>39</sup> Common Article 1 of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>40</sup> on the right of all peoples to self-determination, is also based on this concept. Future initiatives will continue the struggle to create and manifest legal structures and institutional mechanisms which respond to civil society. The word "mock trial" inaccurately describes the work of the Peoples' Tribunal, as it is not a fake trial, but essentially a real trial without legal force.
71. This Peoples' Tribunal represents a belief that states cannot, through their political agreements and settlements, ignore or forgive crimes against humanity committed against individuals. Three characteristics in particular distinguish this Tribunal from its predecessors. First, these proceedings were held in Japan, the country which has perpetrated the wrongs charged in the Indictments and the Application for Restitution and Reparations. Second, it is a Women's Tribunal, a Tribunal specifically established by an international committee of women's groups to redress crimes of sexual violence against women. Third, the Tribunal was established by grassroots organisers from within the victimised countries rather than by distinguished persons from outside. It focuses upon crimes of sexual violence and slavery routinely discounted in peace settlements and effectively erased from or ignored in the official records.
72. The reliance in the earlier Peoples' Tribunals upon well-known persons from "cultural, legal and religious life"<sup>41</sup> did not, however, ensure the inclusion of women's voices

<sup>37</sup> J. Rawls, *The Law of Peoples*, in *On Human Rights*, The Oxford Amnesty Lectures (Stephen Shute and Susan Hurley eds., 1994), pp. 50-51.

<sup>38</sup> Liberal and neo-liberal jurists can be the basis of this jurisprudential position. The discussion of Locke (social contract) and Rousseau (general will) is a starting point. Rawls is yet another source. See Rawls, *The Law of Peoples*; *Dias Jurisprudence* (4<sup>th</sup> ed. 1976) Butterworths, London, pp. 95-96, 98. In the area of case law, see e.g. *Uganda v. Commissioner of Prison, Ex Parte Matovu* [1966] E.A. 514; *State v. Dosso* [1958] S.C. Pak. 533.

<sup>39</sup> UDHR, Article 21; ICCPR, Article 25.

<sup>40</sup> ICCPR, Article 1, and ICESCR, Article 1.

<sup>41</sup> Richard Falk, *The Rights of People*, p. 28.



(despite the presence of Simone de Beauvoir as a Judge in the Russell Tribunal).<sup>42</sup> In the 1990s, the social movements for the empowerment of women and for the greater promotion and protection of human rights have drawn together and have, through a range of initiatives, prompted some changes within national and international structures.<sup>43</sup> Such initiatives include public hearings on discrimination, crimes of oppression, and violence against women, including in armed conflict. For example, the Vienna World Conference on Human Rights and the Beijing Fourth World Conference on Women sought to raise awareness of the extent and severity of gender-based violence and other forms of direct and indirect discrimination against women. The Tribunal also notes the proliferation of public hearings around the world addressed to violence against women and other previously ignored violations.<sup>44</sup> In some cases, the public hearing has taken the form of a community demand, such as the historic march of Rwandan women calling for justice for women before the International Criminal Tribunal for Rwanda (ICTR)<sup>45</sup> in the *Akayesu* case.<sup>46</sup> This Tribunal goes further in combining consciousness-raising with a formal process allocating responsibility for the commission of such offences. It illustrates the value in certain contexts of devising strategies that combine traditional women's organising methodologies – networking, consciousness raising, and alliance building – with procedural initiatives that have established legitimacy among states and within civil society.

73. Taking the above into consideration, we are persuaded by the argument of the Prosecutors that sovereignty ultimately resides in the people of each state and territory and therefore the region. The People as holders of this sovereignty have the right to require states to adhere, at the least, to their international obligations, particularly those that relate to the protection of the individual and concern breaches of international humanitarian law, international human rights law, and customary norms of international law. The Judges therefore find that this Tribunal has been given jurisdiction over the proceedings by the People of the region.
74. The Judges also wish to emphasise from the outset that it has already concluded in its Summary of Findings that the Emperor HIROHITO incurs criminal liability for his acts or omissions in relation to the “comfort system” as does the state of Japan for failing in its responsibilities to remedy this horrendous wrong. Further, we set forth in this Judgement the extensive factual findings and legal analyses underpinning those determinations as well as legal findings as to criminal responsibility of the other accused. The Tribunal also issues its factual and legal findings concerning criminal responsibility for the rapes at

<sup>42</sup> See Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (2000), pp. 90-93.

<sup>43</sup> Christine Chinkin, *Human Rights and the Politics of Representation: Is there a Role for International Law*, in *The Role of Law in International Politics* (Michael Byers ed. 2000), p. 131.

<sup>44</sup> For example, see *Crimes Against Women: The Proceedings of the International Tribunal* (Diana Russell ed. 1976, rep. 1984); *Report on the Public Hearing on Crimes against Women in Recent Wars and Conflicts and the Events Around the International Criminal Court in Tokyo from 8-12 December 2000*, coordinated by the Women's Caucus for Gender Justice; Charlotte Bunch and Naimh Reilly, *Demanding Accountability, The Global Campaign and Vienna Tribunal for Women's Human Rights* (Center for Women's Global Leadership, 1994); *World Conference on Human Rights, Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23 of 12 July 1993; *Fourth World Conference on Women, Beijing Declaration and Platform for Action*, UN Doc A/CONF.177/20 of 17 October 1995.

<sup>45</sup> *International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994*, SC Res. 955, annex, UN SCOR, 49<sup>th</sup> Sess., Res. & Dec., at 15, UN Doc S/INF/50 annex (1994) [ICTR Statute or Rwanda Statute].

<sup>46</sup> *Prosecutor v. Jean-Paul Akayesu, Judgement*, ICTR-96-4-T, 2 Sept. 1998, T. Ch. I (*Akayesu* Trial Chamber Judgement).

Mapanique. We note with extreme dismay, however, that notwithstanding the condemnation of the “comfort system” by several United Nations Rapporteurs and the acceptance of their reports by the political bodies of the United Nations, numerous cases brought by survivors of the “comfort system” against the state of Japan have been dismissed, often summarily, in formal legal proceedings brought in Japan, the US, and elsewhere. It is our hope that the determinations of this Tribunal will not provide the former “comfort women” with the only form of redress they ever receive, particularly in light of their advancing years; but rather that the force of the Judgement of this Peoples’ Tribunal will finally persuade the state of Japan, the Allies, and the international community at large to fulfil their respective responsibilities to ensure the long and painfully overdue legal recognition of wrongdoing and provision of full remedies to the survivors and to those who claim on behalf of women who did not survive the atrocities.

## 2. *The Multilateral Nature of International Human Rights Law: Obligations Owed Erga Omnes*

75. The Tribunal considers that certain breaches of international law are of concern not only to the victim state but also to the broader international community. We take into account the views of the International Court of Justice (ICJ) in the *Barcelona Traction* case. The ICJ drew an essential distinction between “obligations of a state towards the international community as a whole, and those rising vis-à-vis another State in the field of diplomatic protection.” The Court noted: “By their very nature the former are the concern of all States...[A]ll States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”<sup>47</sup> Even if the creation of such obligations is an essentially bilateral matter, the violation of those obligations is not. All states (and peoples) have an interest in the enforcement of obligations *erga omnes*.
76. Commentators suggest that public international law demands the enforcement of state obligations *erga omnes* in the same way that a municipal community demands regulation through a core structure of public or criminal law in addition to private contracts operating between individual members of the community.<sup>48</sup> Thus, in this example, individuals may be regarded as free to control and dispose of their own interests in the system, but have no right to control or dispose of the community interest. In the international context, it is permissible for a victim state to waive a right to reparation for its injury, but not to release the actor from the obligation to obey the law as to individuals. In essence, a victim state may excuse, but not exculpate. Accordingly, other states may respond to internationally wrongful acts under international law that give rise to obligations *erga omnes*, for example crimes against humanity, as well as address the continuing failure to accept responsibility for the commission of such crimes.
77. This reasoning flows from the establishment of the Nuremburg Tribunal and the IMTFE. The Allies asserted jurisdiction on behalf of all the victim states and individuals affected by crimes committed during the Second World War in Europe and in the Asia-Pacific region. This Tribunal’s findings regarding the application of the Peace Treaties signed by Japan after the Asia-Pacific Wars are centrally related to the precedent established in these earlier fora and shall be discussed later in the Judgement.

<sup>47</sup> *Barcelona Traction*, 1970 ICJ Rep at 32.

<sup>48</sup> See e.g. Vaughan Lowe, *Precluding Wrongfulness or Responsibility: A Plea for Excuses*, *European Journal International Law* (1999), pp. 405-411.

78. The concept of obligations *erga omnes* has widened to encompass not only the notion of accountability of states to other states, but also accountability of all international actors to individuals, international civil society, and states alike. This, in fact, is reflected in the United Nations Charter, which refers to “We the Peoples.” In this communitarian view of international law, “[m]embership of [the international] community and subjection to at least, its basic norms cannot be understood as an optional matter hinging on anterior expressions of state volition.”<sup>49</sup>
79. The Draft Articles on State Responsibility 2000 provisionally adopted by the International Law Commission’s Drafting Committee reflect a similar approach and explicitly state:

The obligations of the responsible State ... may be owed to another State, to several States, or to the international community as a whole, depending on the character and content of the international obligation and on the circumstances of the breach, and irrespective of whether a State is the ultimate beneficiary of the obligation.<sup>50</sup>

80. In addition to holding states accountable, all states clearly have an interest in ensuring that international crimes, particularly those as egregious as crimes against humanity, are redressed. Certain international crimes, including slavery, are considered so heinous and so threatening to international peace and security that the crimes – and their individual perpetrators – are subject to universal jurisdiction. This means that any state may prosecute alleged individual violators, regardless of where the crime was committed or against whom it was committed.<sup>51</sup> Individual or superior criminal responsibility are separate from state responsibility, and universal jurisdiction over certain international crimes – including war crimes and crimes against humanity – is applicable to individuals. Many of the post World War II war crimes trials held in Europe were explicitly based on universal jurisdiction.<sup>52</sup>

#### **K. THE TOKYO TRIBUNAL AS A CONTINUATION OF THE IMTFE**

81. In adjudging the Common Indictment, this Tribunal sits as if it were a reopening or continuation of the IMTFE and the subsidiary trials held in the Asia-Pacific. This is justified because those tribunals did not charge or adjudicate the responsibility of the accused herein for war crimes or crimes against humanity with regard to the “comfort system” or the mass rapes committed in Mananika. As to those accused who were tried by the post-war Tribunals, this Tribunal will treat these proceedings as an extension of their trial.
82. Accordingly, we shall heed the Charter of the IMTFE insofar as it is relevant to the current proceedings and we note its jurisdictional authority as follows:

Article 5. Jurisdiction Over Persons and Offenses: The Tribunal shall have the power to try and punish Far Eastern war criminals who as

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<sup>49</sup> John Tasioulas, In defence of relative normativity: communitarian values and the Nicaragua case, 16 Oxford Journal of Legal Studies (1995), p. 85.

<sup>50</sup> Draft Articles on State Responsibility 2000, UN Doc. A/CN.4/L.600, 11 August 2000 (hereinafter Draft Articles 2000) Article 34(1).

<sup>51</sup> Slavery Convention, signed in Geneva 25 September 1926, 46 Stat. 2183, 60 L.N.T.S. 253, Article 5.

<sup>52</sup> See discussion in Law Reports of Trials of War Criminals, Vol XV, pp. 23-48.

individuals or as members of organisations are charged with offenses, which include Crimes Against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility.

Crimes Against Peace...;

Conventional War Crimes: Namely, violations of the law or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory;

Crimes Against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

Article 6. Responsibility of Accused: Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.<sup>53</sup>

83. As an extension or continuation of the IMTFE proceedings, it is appropriate to consider the evidence before, and findings of, the IMTFE where applicable. The record and Judgement of the IMTFE contain findings of fact regarding matters relating to certain issues raised in the present case. We note, for example, that the IMTFE found that “torture, murder, rape and other cruelties of the most inhumane and barbarous character were freely practiced by the Japanese army and navy.”<sup>54</sup> On the basis of the evidence before it, the IMTFE found that the “atrocities committed in all theatres of war [were] on a scale so vast, yet following so common a pattern in all theatres, that only one conclusion is possible – the atrocities were either secretly ordered or willfully permitted by the Japanese Government or individual members thereof and by the leaders of the armed forces.”<sup>55</sup> This Judgement will incorporate and draw upon these findings.

#### **L. THE INAPPLICABILITY OF AMNESTY**

84. This Tribunal finds that there are no amnesties that apply to the adjudication of the Common Indictment before this Tribunal. First, as a Peoples’ Tribunal, our Court is not bound by the agreements of states, certainly not by agreements resulting in impunity for international crimes. Furthermore, on signing the Treaty of Peace in San Francisco on 8

<sup>53</sup> IMTFE Charter, Article 5 (emphasis added).

<sup>54</sup> IMTFE Judgement (Roling), p. 385.

<sup>55</sup> IMTFE Judgement (Roling), p. 385.

September 1951,<sup>56</sup> the state of Japan “accepted the judgements of the International Military Tribunal for the Far East and of other allied war crimes courts both within and outside of Japan.”<sup>57</sup> On this basis, Japan consented to both the jurisdiction and Judgement of the IMTFE. Due to the fact that our jurisdiction to consider the Common Indictment before us is likewise based on international law existing at the time the crimes were committed and involves charges that should have been prosecuted in 1946, we consider that there is no amnesty which limits our jurisdiction from considering these issues as a matter of international law.

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<sup>56</sup> San Francisco Treaty of Peace, 136 UNTS 45, p. 47.

<sup>57</sup> San Francisco Treaty of Peace, Article 11.

## PART II – FACTUAL FINDINGS

### A. DESCRIPTION OF THE EVIDENCE RECEIVED

85. With respect to the question of the criminal responsibility of the individual accused, the nine Prosecutor teams and the two co-Chief Prosecutors presented an impressive amount of evidence regarding the history of the Japanese aggression in the Asia-Pacific region, the painstaking development of the military sexual slavery system, and the horrific experiences of the girls and women enslaved in the system. Thirty-five survivors, who were present and sworn, testified at the proceedings directly or through video interviews about how they were repeatedly raped and otherwise abused by Japanese soldiers or officers. Other unsworn testimonies were received through video and affidavit.
86. The Judges emphasise that, in conformity with formal judicial proceedings, our findings are based solely on the evidence before us and on general factual information that is so commonly accepted that we can take “judicial notice” of it. We note that there is a plethora of other evidence or documentary sources that were not proffered at trial and thus are not part of the official record. Hence, we decline to take these other sources into account in making our deliberations as to guilt. Our findings on the rape and enslavement of women during the war in the Asia-Pacific are based, therefore, predominantly on the testimony of victim-survivor witnesses themselves, many of whom testified in person before this Tribunal. While indicative of the crimes generally, this testimony represents merely a fraction of horrors suffered by the totality of women and girls affected. Likewise, the testimony we heard from two former perpetrator-soldiers represents but a miniscule portion of the vast number of Japanese military personnel who engaged in rape and participated in maintaining the system of military sexual slavery. And, finally, as discussed, *infra*, the documents we examined are only the fraction of documents which survived the massive destruction and concealment carried out by Japanese officials.

### B. THE TESTIMONY OF THE SURVIVORS

87. Virtually all of the victim-witnesses who testified before this Tribunal testified publicly, using their own name and declining protective measures such as image or voice distortion devices. Only one survivor – Ms. X – testified under a pseudonym. This fact alone demonstrates the extraordinary courage and strength of the victim-witnesses, as even in domestic settings, victims of sex crimes seldom testify publicly in open court about the crimes committed against them.
88. The Judges find each of the witnesses who testified in person or in video 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. While the Judges have observed minor discrepancies in the oral and documentary evidence on occasion, we note that such discrepancies are normal and must be considered in light of the circumstances, particularly the over five decades since the crimes occurred; the youthfulness of many witnesses when the crimes were committed against them; the repeated and traumatising nature of the crimes; and the fact that the women were typically kept in conditions that prevented them from knowing such details as exact dates and precise locations. Inconsistencies in some details in no way indicate that the witness was not subjected to rape or sexual slavery.

89. We agree with the ICTY Trial Chamber Judgement in the *Kunarac* case, which dealt with the sexual slavery of young girls, that the level of detail which such witnesses could be expected to recall may be different from that expected of witnesses who were older at the time the crimes were committed against them. The most important criteria are whether the witnesses have recounted the essence of the events in acceptable detail and whether the Judges find their testimony credible.<sup>58</sup> Finally, we note that the women's testimony was presented in order to document and prove the existence of the system of sexual slavery; it was not relied upon by the Prosecutors to identify particular accused or their involvement in the crimes charged. The prosecution presented expert testimony and documentary evidence to establish their case against the accused. Moreover, the Prosecutors did not allege that any accused were the physical perpetrators of any crimes alleged in the Common Indictment. Therefore, once a finding is made that rape and sexual slavery were committed systematically and on a large scale, any discrepancies in minor details of the particular incidents of rape and sexual slavery would not affect the findings as to criminal responsibility of the accused. Hence, the minor discrepancies are ultimately irrelevant to the final determinations of this case.

**C. DOCUMENTARY EVIDENCE REGARDING THE ROLE OF JAPAN OR THE ACCUSED IN ESTABLISHING AND MAINTAINING THE "COMFORT SYSTEM"**

90. The Prosecutors also presented evidence in documentary form from the archives of Japan and some of the Allied countries and from memoirs of former officers and others involved regarding the history of the system of the Japanese military sexual slavery. While the documents are valuable as evidence of official responsibility for the "comfort system" and impelled the state of Japan to acknowledge, at least generally, its participation and the coercive nature of the "comfort women" system, the Japanese documents available to us are but remnants of the full record in respect to state responsibility. As discussed in the Judgement on State Responsibility, upon orders from the highest authorities, the Japanese military and government engaged in the deliberate destruction of documents relating to the war. It appears that, if not destroyed, the remaining documents were classified and few have been declassified either by the government of Japan or the Allied governments. Considering the perceived importance of the "comfort system" to Japan's war of aggression, the pervasiveness of the "comfort stations," and the sheer magnitude of the system, the destroyed, concealed, or withheld documents must contain information regarding the "comfort women" system and the responsibility of the accused therein. Nonetheless, despite the partial record and the role of the government of Japan in destroying evidence, we limit our holdings to the evidence before the Tribunal.
91. A significant amount of documentary evidence was entered into the trial record. Due, however, to space considerations and an effort to avoid repetitive or duplicative evidence, only a few of the documents that are of special significance are summarised below.

**1. *The Recruitment Memo and Taiwan Army Telegram No. 602***

92. Two internal documents produced during the war by the Japanese government and military provide substantial evidence of the pervasive responsibility for "comfort station" policy-making and operation at all levels of the government hierarchy. The first is a memorandum entitled "Matters Concerning the Recruitment of Women" ("Recruitment

<sup>58</sup> Prosecutor v. Kunarac, Judgement, IT-96-23 and IT-96-23/1, 22 February 2001, paras. 564-565 (*Kunarac* Trial Chamber Judgement).

Memo”) sent on March 4, 1938 by an Adjutant General in the Japanese War Ministry to the Chiefs of Staff of the North China Area Army and the Central China Expeditionary Forces.<sup>59</sup> This incriminating document provides insight into the military’s efforts to disguise the coercive nature of the “comfort system”, the complicity of local authorities, and the military’s supervision of and involvement with private actors in the recruitment process. The Recruitment Memo is reproduced in full below:

Notice from the Adjutant to the Chiefs of Staff of the North China Area Army and Central China Expeditionary Force.

In recruiting women domestically to work in the military comfort stations to be set up in the areas affected by the China Incident, it is feared that some people have claimed to be acting with the military’s consent and have damaged the honour of the army, inviting the misunderstanding of the general public. We are also afraid that, through the mediation of the reporters following the military and people visiting soldiers, people are recruiting women unsupervised and causing social problems. There have also been instances where a lack of proper consideration resulted in the selection of inappropriate people to round up women, people who kidnap women and are arrested by the police. There are many things that require careful attention. In the future, armies in the field will control the recruiting of women and will use scrupulous care in selecting people to carry out this task. This task will be performed in close cooperation with the military police or local police force of the area. You are hereby notified of the order [of the Minister of War] to carry out this task with the utmost regard for preserving the honour of the army and for avoiding social problems.

93. This memo appears, at first, to suggest that the Ministry of War was concerned with ending kidnapping as a means of “procuring” women for the “comfort stations.” However, the document does not instruct the chiefs of staff of the North Chinese Area Army and the Central China Expeditionary Force, as the noted recipients of the document, either to ensure that the women consent to their “recruitment” into the “comfort station” system, or to avoid the “recruitment of minors.” Instead, the document urges them to “carry out this task with the utmost regard for preserving the honour of the army and for avoiding social problems.” The chiefs of staff and the Central China Expeditionary Force were thus notified by this memorandum that the “recruitment” methods included the kidnapping of women. They were warned by the memo that they must be careful not to generate social problems as a result of their recruitment practices, and told that the military police and local police should be involved in the recruitment. The recipients of the document were, therefore, not only on notice that force and coercion were used to “recruit” the women; but they were also ordered to perform their functions within the “comfort system” more discreetly, with the cooperation of military or local police.
94. The Judges consider this Recruitment Memo as evidence of the responsibility of the Japanese military in the coercive or deceptive recruitment of girls for the “comfort

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<sup>59</sup> Registry No. 222-C.



system.”<sup>60</sup> The Judges find that, in light of the totality of the evidence adduced at trial, the principal concern of the War Ministry was protecting the image of the army and avoiding complaints and rebellion; it was not ensuring respect for and the consent of the “procured” women.

95. The Recruitment Memo provides compelling evidence that the Ministry of War was aware of the coercive methods used to force women into the system. The lack of specific and clear instructions by the Ministry of War to ensure that the women were agreeing to provide sexual services demonstrates a deliberate and palpable disregard for their well-being. Rather, the order to work closely with military and local police, expressed in the Recruitment Memo and in other documents, demonstrates that the War Ministry knowingly authorised the forcible or coercive recruitment of women for the “comfort stations.”
96. In addition to the Recruitment Memo, which provides evidence generally of the involvement of the Japanese government and military in the coercive operation of the “comfort stations,” other documents in evidence directly substantiate the involvement of several of the accused in the sexual slavery system. One important document is a confidential telegram from the Commander of the Taiwan Army, ANDO Rikichi, to the War Minister, TOJO Hideki, titled “Tai-den No. 602” or “Taiwan Army Telegram No. 602,” dated 12 March 1942. The notations on the document indicate that it was received by the Ministry of Army No. 2259 on 17 March 1942. The telegram states:

In regard to the Secret Telegram of Army No. 63, we’ve been asked by the Southern Army General Command to dispatch as soon as possible 50 native comfort women to ‘Borneo’. On the basis of Secret Telegram of Army No. 623, we request travel permits for the 3 operators named below [names deleted by Japanese authorities], who have been investigated and selected by the military police.<sup>61</sup>

97. This telegram substantiates the claim that ANDO and TOJO were directly involved in the operation of the “comfort women” system and knew that military police were involved in the selection of station proprietors. It is extraordinary that the Minister of War would be involved in such a seemingly insignificant detail as authorising travel permits for three “comfort station” operators and this confidential telegram is indicative of the high priority the military placed upon securing “comfort women” for the soldiers and the secrecy surrounding the system.
98. The Ministry of War responded to the above telegram on March 16, 1942<sup>62</sup> with “Riku-amitsu No. 188” or the “Secret Telegram of the Army 188.” This response was authored

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<sup>60</sup> This Recruitment Memo was uncovered by Professor Yoshimi, who testified in written form regarding its significance. The Recruitment Memo revealed for the first time the direct involvement of the Japanese government in the creation and operation of the “comfort station” system, and is widely believed to have motivated the Japanese government to publicly acknowledge this involvement. As explained in Professor Yoshimi written testimony, this document reveals that the Ministry of War was concerned about the reputation of the Japanese army among the population and that it ordered each expeditionary force to supervise the rounding up of women and to choose the recruiters more carefully. That task was to be carried out in close cooperation with the military or local police. Professor Yoshimi also explained that the phrase “You are hereby notified of the order [of the Minister of War] to...” used within the recruitment memo is very important because it signifies that the document was issued with the authorisation of the War Minister, Sugiyama Hajime, and that the Ministry of War was involved in the development of “comfort station” policies.

<sup>61</sup> Registry Nos. 4 and 158.

<sup>62</sup> Although the date of the telegram is one day prior to the date the first telegram is marked “received”, the Tribunal is not in a position to determine the cause of the discrepancy.

by the Adjutant General of the War Ministry and sent to the chief of staff of the Taiwan Army.<sup>63</sup> It states that “the authorization requested in Tai-den No. 602, dated 12<sup>th</sup> of March, is hereby granted by order of superior authority.” Clearly, procedures involved with the “comfort women” system were a matter to be handled by high level officials. The correspondence between and participation of the Minister of War and Commander of the Taiwan Army establishes that the top government and military officials were involved in “comfort station” policy-making, and that the accused ANDO and TOJO were part of the chain of command which determined and implemented such policies.<sup>64</sup>

## 2. *Allied Reports*

99. Two reports by the Allied powers concerning interviews with women from a “comfort station” in Burma corroborate that the Japanese Imperial Army was involved both directly and indirectly in establishing and operating the sexual slavery system and provide support for the contention that Allies had evidence of the coercive nature of the “comfort system.”
100. The two Allied reports are based upon information obtained from interrogations held in Burma of “20 Korean Comfort Girls” who had been maintained in “comfort stations.” Also interviewed were two Japanese civilians, a couple identified as the “proprietors” of the women. The reports indicate that the “girls” and the two Japanese civilians were “captured” by Allied forces and confined by U.S. troops to a stockade. The interrogations took place between August 20 and September 10, 1944 by the U.S. Office of War Information Psychological Warfare Team attached to the US Army Forces in the India-Burma Theatre. The interrogation responses were compiled and subsequently published

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<sup>63</sup> Registry No. 5.

<sup>64</sup> A series of documents dealing with the procurement policies of the Taiwan Colonization Company to provide women for the “comfort stations” and the involvement of the Company in building “comfort stations” reveal the Taiwan Government-General’s close oversight of the “comfort stations” in Taiwan. The first is a document entitled “On the Naval Comfort Station in Hainan Island” dated April 4, 1939 and authored by the President of the Taiwan Colonization Company, Kato Kyohei, with two other persons. This document reports that Kihara Enji, the Research Section Manager of the Government-General of Taiwan, asked Takayama Sanpei, the director of the Taiwan Colonization Company, to dispatch 90 women to Hainan Island – 10 *Geigi*, 50 *Shogi*, and 30 *Geigi* and *Shogi*. *Geigi* indicates a geisha who also serves as a prostitute. *Shogi* means a licensed prostitute. According to the expert witness Professor Hayashi Hirofumi, the Taiwan Colonization Company thought it inappropriate to do the job itself and so ordered it done by its subsidiary Fukadai Company.

Another document titled “Proper Supply of Materials to Hainan Island” was authored by the President of the Taiwan Colonization Company on April 21, 1939. In this document, the President reported to Morioka Jiro, Director-General of the Government-General of Taiwan, that “specially required personnel” for the “comfort station” were on board the ship “Kinreimaru” which left Jilong Port on April 18, 1939. The document lists three managers of the comfort station and 13 women between the ages of 17 and 41 identified as potential *geigi* (a geisha who also serves as a prostitute), and *shakufu* (a waitress who also is a prostitute). The document was published in *Operations Review*, 1938, Vol.2, Research Section, No. 43. The expert witness Professor Hayashi testified that these women were most likely Japanese women living in Taiwan.

In conjunction with this project, a “List of Persons Associated with Taiwan Colonization Company Who Went over to Hainan Island (as of June 19, excluding those who returned to Taiwan), Cooperation in Military Activities in Central and South China after the China Incident” dated June 19, 1939 was produced by an unknown author. It lists the persons who left for Hainan Island on April 1, April 18, and May 24. The list includes labourers, “specially required personnel” (and indicates persons involved in the “comfort station” including “comfort women”), and construction workers and the carpenters for the “comfort station.” Moreover, the address on the list of four Japanese *Geishi* and four Japanese *Shakufu* is the same as that of Okuda Jinzaburo, manager of the “comfort station.” The document corroborates the work of the Corporation in establishing “comfort stations.”

The final document in this series relating to the Taiwan Colonization Company is entitled “Outline of the Construction Work in Hainan Island.” This document was written by “Sakai” of the Taiwan Colonization Company and dated July 26, 1939. The document states that the “construction business in Hainan Island is what a joint three-ministry meeting requested . . . through the Government-General of Taiwan.” These documents demonstrate that the three-Ministry meeting engaged the Taiwan Colonization Company to ‘recruit’ women and construct stations through the Government-General, which oversaw the company’s work.

in the “U.S. Office of War Interrogation Report No. 49” (“OWI Report”).<sup>65</sup> Originally classified “Secret” by the United States, the OWI Report also refers to “other reports which show that ‘comfort girls’ . . . [were] . . . found wherever it was necessary for the Japanese Army to fight.” The second report, also a US military document, is also based on interviews with the twenty comfort women and two proprietors, and is titled the “SEATIC Psychological Warfare Interrogation Bulletin No.2” (“SEATIC Bulletin”).<sup>66</sup> Although the interviewees are the same, it is not known whether the reports are based on the same set of or separate interviews.

101. The OWI Report and the SEATIC Bulletin provide valuable information about the conditions within the “comfort stations” and details about recruitment practices. While the two reports differ in several respects, it is clear, from a comparative reading of the reports, that they are based upon interrogations of the same individuals during the same time period. The Judges read the documents together in order to compare and contrast the information contained therein.
102. Both documents state that the women were employed by contract and according to contract terms at the same time as they make clear that these contracts were not voluntary. The OWI Report indicates that Japanese agents recruited women by deception. The women interrogated for the OWI Report stated that they were told by recruiters that they would provide “comfort” services, such as visiting the wounded, rolling bandages, and “generally making the soldiers happy.” The OWI Report states that most of the women targeted for recruitment were uneducated. In addition, the report makes clear that far from tending to recuperating soldiers in a safe and comforting environment, the women were forced into sexual servitude and held during their period of “service” in close proximity to battlefields. The Allied bombing forced them to seek shelter in foxholes and some of the bombs hit the “comfort stations” wounding or killing many of the women inside. The OWI Report also mentions that the women were ordered to follow retreating soldiers and were ultimately abandoned by them.
103. The OWI Report states that the women and girls signed contracts to abide by Japanese army regulations and work for the “house master” for six months to a year. The term period of the contract depended upon the amount of money received by the family. This is corroborated by the SEATIC Bulletin’s description of the women’s terms of “contract” and the means by which they were acquired. The SEATIC Bulletin states that the “proprietor” of each “comfort station” purchased the women from their families for 300-1000 Yen each, “according to [their] personality, looks, and age,” and as a result she became “his sole property.” The OWI Report states that the women were “enticed” to “enlist for comfort service” upon which they were “rewarded with an advance of a few hundred yen.”
104. The OWI Report describes a “comfort” facility in Burma as “near-luxury . . . in comparison to other places,” especially when considering the availability of food, toiletries, and money to buy things and to shop in town.<sup>67</sup> It also states that women could

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<sup>65</sup> Exhibit 11, U.S. Office of War Information, Psychological Warfare Team, Attached to the US Army Forces India-Burma Theatre, October 1, 1944, Japanese Prisoner of War Interrogation Report No. 49 (OWI Report).

<sup>66</sup> Exhibit 59, Southeast Asia Translation and Interrogation Center (SEATIC), Psychological Warfare, Interrogation Bulletin No. 2, January 2, 1945 (SEATIC Bulletin), in conjunction with Research Report, Amenities in the Armed Forces, No. 120, 15 Nov. 1945, Allied Translator and Interpreter Section, Supreme Commander for the Armed Forces.

<sup>67</sup> The OWI Report states that in Burma the women were usually “quartered” in a large two-story building, typically a school, and that they tended to have separate rooms where “each girl lived, slept, and transacted business.”

refuse customers and that they were paid well. However, 50-60% of their gross pay (1500 Yen per month) went to the house master who also made “conditions very difficult for the girls by charging them high prices for food and other articles.” The SEATIC Bulletin states that the women’s maximum gross takings were 1500 Yen per month, and the minimum was 300 Yen, “or by rule of the house the [woman] had to pay the brothel owner a minimum of 150 Yen per month.” It also states that owners charged women exorbitant prices for both necessities and luxuries. These factors combined indicate that the situation was slave-like despite the existence of some provision for payment. If the girls and women were purchased or otherwise did not freely consent to work as “comfort women,” at the outset or at any point thereafter, their situation was slavery notwithstanding efforts to disguise that reality.

105. The OWI Report states that, in late 1943, the Japanese army issued orders that certain girls who had paid their debts could go home. The Judges’ note, however, that the latter order occurred more than one year after the women’s arrival in Burma in August 1942 and there is no indication that any of the women actually left. The SEATIC Bulletin also states that the contract conditions for the women included a provision indicating they would be provided with free return passage home when their debt was repaid with interest. The SEATIC Bulletin confirms that despite this contract provision, no woman left Burma as a result of such release.<sup>68</sup> However, the SEATIC Bulletin reports that in June 1943 the women who were free from debt were to be assisted by the Japanese army to return home less than a year after their arrival in Burma. The SEATIC Bulletin notes that only one woman qualified for such assistance and that in any event she was purportedly “easily persuaded to remain” in Burma. As earlier indicated, the Judges will carefully scrutinise claims of voluntary participation in the “comfort station” system because overwhelming evidence suggests that slave-like conditions and involuntary recruitment constituted fundamental characteristics of the system as a whole. In this case the source of the information regarding the woman who remained in Burma was the “proprietor” who had “bought” her, a singularly unreliable source on the issue of voluntariness. Based upon such meager information, it is highly questionable that the woman who “was easily persuaded to remain” in fact continued to work within the “comfort station” system of her own free will, whether she was coerced to remain by the proprietors or they took advantage of the wartime conditions that precluded her from leaving.
106. As mentioned, the OWI Report states that the Japanese army established detailed regulations that imposed inhumane conditions upon the “comfort” women and girls. The regulations, provided the time schedule, according to military rank, for sexual services to be provided by the “comfort women.” The women interrogated for the OWI Report stated that they were required to be available to Japanese military personnel from 10 am to 12 midnight. The regulations also permitted officers to stay overnight. A second schedule regulated access for the different army units to avoid problems of “congestion” although officers were allowed access to the women seven nights a week. The Japanese army assigned military police to “keep order” but the “congestion” was often too great and caused “ill-feeling” among the soldiers. The OWI Report states that the “girls” held in Burma had the prerogative to refuse a “customer,” particularly “if the person were too drunk.” The Japanese army supplied condoms to the facilities and to the soldiers directly. Finally, it states that army doctors checked the women for diseases weekly, and both women and soldiers were secluded if diseased, noting that “a soldier did not lose pay during the period he was confined.”

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<sup>68</sup> The SEATIC Bulletin implies that women were prevented from leaving due to war conditions.

107. The Judges find that the description of the realities of “comfort” station conditions contained in the OWI Report, despite references to “near-luxury” facilities in some locations, confirms the testimony of the survivor-witnesses before this Tribunal. Most witnesses testified both to the deceptive recruitment practices of the Japanese military and private actors acting on behalf of and with the knowledge of the Japanese military, and to the detailed regulation of military access to the women for the purpose of forced or coerced sexual intercourse or other forms of sexual violence.
108. The foregoing documents represent only a portion of the documentary evidence entered into the trial record concerning the responsibility of high-level Japanese officials in establishing and maintaining the sexual slavery system.

#### D. DECLARATIONS AND ADMISSIONS OF THE STATE OF JAPAN

109. Until 1992, the Japanese government denied any involvement of the military or state in the coercion of women and girls into and in the “comfort system”. When the victim-survivors began to speak out and independent researchers discovered incriminating documents, which put Japan under domestic or international pressure, various officials made important albeit partial admissions of state responsibility.
110. On 13 January 1992, two days after Professor Yoshimi disclosed the discovery of six incriminating documents, Chief Cabinet Secretary Kato Koichi issued a public statement that “the Japanese military’s involvement [in the ‘comfort system’] is undeniable.”<sup>69</sup>
111. On 4 August 1993, the government of Japan released a report of the findings of government investigation and document survey entitled “On the Issue of Wartime “Comfort Women”.”<sup>70</sup> Issued by the Cabinet Councillors’ Office on External Affairs, this report contains euphemistic but significant admissions. The study lists the findings as follows:

The comfort stations were established in response to the request of the military authorities at the time...

Comfort stations [were established because of] the need to prevent anti-Japanese sentiments from fermenting as a result of rapes and other unlawful acts by Japanese military personnel against local residents in the area occupied by the then Japanese military [and] the need to prevent loss

<sup>69</sup> Exhibit 219. See also Asahi Shimbun, 14 January 1992. In the same statement, Secretary Kato also apologized for the suffering of “comfort women”; the matter of the apology is dealt with *infra*. On 11 January 1992, the Asahi Shimbun, a leading Japanese daily newspaper reported Professor Yoshimi’s discovery of these documents. Professor Yoshimi’s book does not specify what these six documents are, but George Hicks identifies five of them as follows: a notice from the War Ministry dated 4 March 1938 to the North China Expeditionary Force recommending to exercise great care in selecting recruitment agents; a circular from North China Headquarters to units under its command dated 27 June 1938 cautioning against illegal acts including rape and calling for sexual comfort; a 2<sup>nd</sup> Army with a table covering 854 comfort women under Army control and 150 under private management; and a general circular, dated 18 June 1942, to overseas agents regulating the supervision of comfort stations. George Hicks, *The Comfort Women*, 1994, pp. 164-165.

<sup>70</sup> Exhibit 231, Cabinet Councillors’ Office on External Affairs, “On the Issue of Wartime “Comfort Women”, 4 August 1993. The subsequent statements of the Japanese government on the “comfort system” have been largely reiterations of the August 1993 statement, which have not added any new information or official documents to shed light on the nature of government involvement. The most up-to-date statement of the Ministry of Foreign Affairs of Japan as of August 2001, for instance, repeats verbatim the August 1993 statement. See, e.g., “Recent Policy of the Government of Japan on the Issue Known As “Wartime Comfort Women”, August 2001 <http://www.mofa.go.jp/policy/women/fund/policy0108.html> (last visited 14 Sept. 2001).

of troop strength by venereal and other diseases, and the need to prevent espionage....

A comfort station was established in Shanghai...in 1932 [and] it is assumed that comfort stations were in existence since around that time to the end of the World War II...The countries or areas where it has been possible to confirm...are: Japan, China, the Philippines, Indonesia, the then Malaya, Thailand, the then Burma, the then New Guinea, Hong Kong, Macao, and the then French Indochina...it is impossible to determine the total number of comfort women, as no document has been found...However, in view of the fact...that comfort stations were operated in extensive areas for long periods, it is apparent that there existed a great number of comfort women...

Many comfort stations were run by private operators, although in some areas there were cases in which the Japanese military directly operated comfort stations. Even in those cases...the Japanese military was involved directly or indirectly in the establishment and management of the comfort stations by such means as granting permissions to open the facilities, equipping the facilities, and drawing up the regulations for the comfort stations that set the hours of operation and tariff and stipulated such matters as precautions for the use of the facilities....

In the war areas, these women were forced to move with the military under constant military control and they were deprived of their freedom and had to endure misery...

In many cases private recruiters, asked by the comfort station operators who represented the request of the military authorities, conducted the recruitment of comfort women. Pressed by the growing need for more comfort women stemming from the spread of the war, these recruiters resorted in many cases to coaxing and intimidating these women to be recruited against their own will, and there were even cases where administrative/military personnel directly took part in the recruitment...

The Japanese military approved requests for [transporting] comfort women...and the Japanese government issued certificates of identification. In quite a few cases the women were transported to the war areas by military ships and vehicles, and in some cases they were left behind in the confusion of the rout that ensued Japanese defeat.<sup>71</sup>

112. In an official statement accompanying this report, Chief Cabinet Secretary Kono Yohei stated:

Comfort stations were operated in response to the request of the military authorities of the day. The then Japanese military was, directly or indirectly involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters who acted in response to the request of the military. The Government study has

<sup>71</sup> Exhibit 231, pp. 3-8.

revealed that in many cases they were recruited against their own will, through coaxing, coercion, etc., and that, at times, administrative/military personnel directly took part in the recruitments. They lived in misery at comfort stations under a coercive atmosphere.

Undeniably, this was an act, with the involvement of the military authorities of the day, that severely injured the honor and dignity of many women.<sup>72</sup>

113. By contrast to the evidence in this case, the report and declarations of Japanese officials minimise the heinous crimes committed. They nonetheless weigh heavily in our consideration of the responsibility of the military for and the nature of the “comfort system” as, a crime against humanity involving rape and sexual slavery.
114. While we welcome these initial steps toward acknowledging overall responsibility for the suffering inflicted through its military sexual slavery system and treat them as admissions for the purposes of this proceeding, the evidence presented before us illustrates that these admissions are both partial and overly general, as discussed *infra* in Part VI on State Responsibility.

#### **E. THE HISTORY OF THE JAPANESE MILITARY AGGRESSION IN THE ASIA-PACIFIC REGION**

115. As the Judgement of the IMTFE reveals, the Japanese government and military sought to dominate the entire Asia-Pacific region beginning at the end of the nineteenth century and continuing through the first half of the twentieth century, by waging aggressive war against targeted territories. The IMTFE found that Japan’s plan was to “secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein or bordering thereon.”<sup>73</sup> In doing so, the Japanese military commanders and government officials perpetrated, facilitated, and permitted some of the most horrible and inhumane atrocities against the civilians (and prisoners of war) in the conquered and occupied Asia-Pacific territories. This section consists of a brief chronological review of the advance of the Japanese army and its treatment of the civilian population in order to provide the framework for the establishment of the so-called “comfort stations” in the next section. The vast majority of the evidence concerning crimes common to the Japanese aggression in all countries and in specific countries comes from the Judgement of the IMTFE and is summarised below.

##### ***1. Crimes Common to the Japanese Aggression Throughout the Asia-Pacific***

116. According to the IMTFE, the Japanese aggression was marked by similar patterns throughout the Asia-Pacific in addition to the crimes involved in the military sexual slavery system. Mass rape, accompanied by sadistic brutality, occurred in such places as Manila, China, the Philippines, Indonesia, and Hong Kong.<sup>74</sup> The women who were raped included civilian women of the Philippines and Indonesia, as well as some women who were the mothers, wives, and other female relatives of the Indonesian oil fields’ personnel. Nurses in Hong Kong were also raped en masse by the Japanese soldiers who captured military hospitals.<sup>75</sup> The rapes in Manila were engendered “when it became

<sup>72</sup> *Ibid.*

<sup>73</sup> IMTFE Judgement, p. 49762.

<sup>74</sup> IMTFE Judgement (Roling), p. 397-400.

<sup>75</sup> IMTFE Judgement (Roling), pp. 397-399.

apparent that Manila would be liberated.”<sup>76</sup> The rapes in China, especially in Nanking, gained international notoriety, as discussed hereinafter.

117. Other forms of torture, such as the water treatment method (wherein water is pumped into the victim until he or she is rendered unconscious, then pressure is applied to the abdomen, often by jumping on the victim’s stomach, in order to force the water out), and the burning of sensitive body parts, including sexual organs, occurred in such places as the Philippines, Malaysia, Indonesia, and East Timor.<sup>77</sup> Forcing persons to kneel on sharp instruments without movement for hours was particularly prevalent in the Philippines and Malaysia.<sup>78</sup> The knee spread method, which causes the separation of knee joints and intense pain, was common in the Philippines, Indonesia, and East Timor.<sup>79</sup> Applying electrical shocks to parts of the body, including sexual organs, was a common form of torture throughout the Philippines, Malaysia, and Indonesia.<sup>80</sup> Another tortuous method which consisted of suspension by the wrists, arms, legs and neck, and at times in such a manner “as to strangle the victim or pull joints from their sockets” occurred with regularity in the Philippines, Indonesia, and East Timor.<sup>81</sup> Other tortuous acts, such as bayoneting infants in the arms of their mothers, slicing open the breasts and wombs of women, and severing male genitalia, were prevalent in the Philippines.<sup>82</sup>
118. Another major type of atrocity, the death marches, occurred in the Philippines, Malaysia, and Indonesia.<sup>83</sup> Civilian internees (included with the captured American prisoners) in the Philippines were forced to march in extreme heat for several days with little food or water. Those who attempted to seek water, or who fell by the wayside, were shot or bayoneted. The IMTFE found that TOJO visited the Philippines in February 1942 in his capacity as War Minister and saw the dead bodies littering the sides of the roads, and asked General Homma about it.<sup>84</sup> In Malaysia, the Japanese soldiers also forced civilian internees in the prisoner of war camps to go on death marches. One of the most flagrant examples of their atrocities was during the construction of the Burma-Siam Railway, when, on the advice of TOJO, the Japanese army used the prisoners of war and civilian internees for the construction of the railroad. Soldiers forced them to march over 200 miles of the most inhospitable and rugged terrain under inhumane conditions, including receiving little food or water, no shelter, and being constantly driven and beaten by the soldiers. Those who tried to escape were killed.
119. The IMTFE also found that “[m]assacres of prisoners of war, civilian internees, sick and wounded, patients and medical staffs of hospitals and civilian populations were common throughout the Pacific War,” including shortly after capture.<sup>85</sup> Mass executions occurred in Indonesia, and in one instance there, against oil field personnel in apparent retaliation for the destruction of oil fields in Java.<sup>86</sup> There were also several instances of wholesale

<sup>76</sup> IMTFE Judgement (Roling), p. 398.

<sup>77</sup> IMTFE Judgement (Roling), p. 407.

<sup>78</sup> IMTFE Judgement (Roling), p. 407.

<sup>79</sup> IMTFE Judgement (Roling), p. 407.

<sup>80</sup> IMTFE Judgement (Roling), p. 407.

<sup>81</sup> IMTFE Judgement (Roling), p. 407.

<sup>82</sup> IMTFE Judgement (Roling), pp. 399, 409.

<sup>83</sup> IMTFE Judgement (Roling), p. 401-404.

<sup>84</sup> IMTFE Judgement (Roling), p. 401.

<sup>85</sup> IMTFE Judgement (Roling), p. 396.

<sup>86</sup> IMTFE Judgement (Roling), p. 397.



massacres of the indigenous Indonesian civilians. Many civilians were forcefully conscripted as labourers for the Japanese war effort and then killed.<sup>87</sup> Mass slaughter also took place in Malaysia, China, French Indo-China, East Timor, the Philippines, and Hong Kong.<sup>88</sup> In some instances, the civilians were massacred by the Japanese because they were suspected of giving aid to prisoners, or in anticipation of Japanese withdrawal and subsequent liberation of the civilian populations in China, Indonesia, East Timor, and the Philippines.<sup>89</sup> Particularly in the Philippines, the Japanese troops carried out wholesale massacres against Filipino civilians,<sup>90</sup> under orders issued by the Manila Navy Defence Force, stating: “[w]hen killing the Filipinos, assemble them together in one place as far as possible thereby saving ammunition and labour.”<sup>91</sup> Other orders regarding the annihilation of civilians, issued by the Kiirun Fortified Area Headquarters, commanded: “Whether they are destroyed individually or in groups, or however it is done, with mass bombing, poisonous smoke, poisons, drowning, decapitation, or what, dispose of them as the situation dictates. In any case, it is the aim not to allow the escape of a single one, to annihilate them all, and not to leave any traces.”<sup>92</sup> In Hong Kong, the Japanese troops “entered the Military Hospital at St. Stephens College and bayoneted the sick and wounded in their beds, ... and murdered the nurses who were on duty there.”<sup>93</sup> These are only examples of a pattern of murder and mistreatment that commonly occurred against the civilians of territories under Japanese control.

120. A chronological summary of the Japanese aggression in the Asia-Pacific follows.

## 2. *Taiwan*

121. Japan took possession of Taiwan in 1895 when it was ceded to Japan as a result of the Shimonoseki treaty, as part of China’s compensation package following China’s defeat in the 1894 Sino-Japanese War. As the first colony of imperial Japan, Taiwan and its citizens were controlled by Japan. Taiwan remained colonised during the war in the Asia-Pacific until Japan’s surrender in 1945.

122. Japan administered Taiwan through the office of Governors-General who were in charge of all the political and policy matters, military operations, and other Japanese interests in Taiwan. According to expert testimony, these Governors-General reported directly to Emperor HIROHITO until the end of the Asia-Pacific war,<sup>94</sup> and worked in close relationship with the Japanese Army in Taiwan as well as in other occupied territories.<sup>95</sup> From 1936 to 1940 KOBAYASHI was Governor-General of Taiwan, followed by ANDO as the last Governor-General four years later, who served from December 1944 to April 1945.<sup>96</sup> ANDO also served as Commander in Chief of the Japanese Army stationed in Taiwan from November 1941 to February 1945, after having served as Commander of the

<sup>87</sup> IMTFE Judgement (Roling), pp. 396-398.

<sup>88</sup> IMTFE Judgement (Roling), pp. 397-399.

<sup>89</sup> IMTFE Judgement (Roling), p. 398.

<sup>90</sup> IMTFE Judgement (Roling), pp. 397-400.

<sup>91</sup> IMTFE Judgement (Roling), p. 400.

<sup>92</sup> IMTFE Judgement (Roling), pp. 400-401.

<sup>93</sup> IMTFE Judgement (Roling), p. 399.

<sup>94</sup> Exhibit 40-a, Slide, entitled “The De Facto System of the Japanese Empire Until August 1945,” presented as part of Expert Witness, Dr. Hayashi, Hirofumi’s testimony, December 8, 2000.

<sup>95</sup> Yoshimi, *Comfort Women*, p. 57.

<sup>96</sup> List of Defendants and Titles, submitted by Professor Hayashi, March 12, 2001.

South China Area Army from February 1940, and as Commander of the 21<sup>st</sup> Army from November 1938.<sup>97</sup>

### 3. *Korea*

123. As a result of the Russo-Japanese war of 1904 to 1905, Japan annexed Korea unofficially in 1905, and officially in 1910 via the Korean-Japanese Annexation treaty.<sup>98</sup> Japan ruled Korea until 1945 through a succession of Governors-General. From August 1936 to May 1942 Minami, Jiro served as Governor-General of Korea,<sup>99</sup> followed by Koiso, Kuniaki, who served from May 1942 until July 1944,<sup>100</sup> and then succeeded by ANDO who served until December 1944.<sup>101</sup> According to expert testimony, these Governors-General also reported directly to Emperor HIROHITO.<sup>102</sup> The Japanese government also enforced its rule of Korea through the Japanese troops stationed there, where Koiso first served as the Commander of the Japanese Army in Korea from December 1935 to July 1938.<sup>103</sup> General ITAGAKI was the Commander in Chief of the Japanese army in Korea from July 1941 to April 1945.<sup>104</sup>
124. The evidence shows that the Japanese presence in Korea was one of long and brutal economic and social exploitation of the Korean land and society. The Japanese exported set quotas of food to Japan from Korea every year even though the Korean harvests were not bountiful. Thus by 1933, Korean citizens suffered severe deprivation in their diet.<sup>105</sup> The quotas of food shipped from Korea to Japan increased.<sup>106</sup> When Korean groups resisted Japanese troops, the Japanese reaction was “to arrest and execute innocent civilians and burn their homes.”<sup>107</sup> Korean youths were conscripted as labourers and forced to work in mines, factories, and military construction sites overseas, while others were drafted into the Japanese army.<sup>108</sup>

### 4. *China*

125. Following its annexation of Korea, the Japanese government and military prepared to extend its domination throughout the Asia-Pacific region. To this end, the Japanese army and government commenced the conquest of China via Manchuria.<sup>109</sup> General Honjo commanded Japan’s Kwantung Army, which was already positioned in Manchuria under the provisions of the Portsmouth Treaty.<sup>110</sup> During this period, ITAGAKI was a Colonel on the Staff of the Kwantung Army. He later became Vice Chief of Staff of the same

<sup>97</sup> Exhibit 224, “Chart of High Ranking Positions in the Japanese Government and Military, 1935-1945.”

<sup>98</sup> Exhibit 19, submitted by the Korean Prosecution, December 8, 2000 (Han Woo-Keum, *The History of Korea*), pp. 428-465; IMTFE Judgement, p. 48465.

<sup>99</sup> List of Defendants and Titles, submitted by Professor Hayashi.

<sup>100</sup> IMTFE Judgement, p. 49812; Exhibit 224.

<sup>101</sup> Exhibit 224.

<sup>102</sup> Exhibit 40-a.

<sup>103</sup> Exhibit 224.

<sup>104</sup> IMTFE Judgement, p. 49798.

<sup>105</sup> Exhibit 19, p. 480.

<sup>106</sup> Exhibit 19, p. 95.

<sup>107</sup> Exhibit 19, p. 484.

<sup>108</sup> Exhibit 19, pp. 496-498.

<sup>109</sup> IMTFE Judgement, pp. 48460-48469.

<sup>110</sup> IMTFE Judgement, p. 48460.

army in 1934,<sup>111</sup> and from 1936 to 1937 was its Chief of Staff.<sup>112</sup> In 1941, ITAGAKI functioned as the personal emissary of General Honjo to Tokyo to gain support for the plan to invade and colonise Manchuria.<sup>113</sup> The Kwantung Army began its offensive against parts of the Manchuria province, which eventually fell to the Japanese troops, commanded by General Honjo, in December 1931. Manchuria was then declared an “independent” state on February 18, 1932.<sup>114</sup>

126. Meanwhile, Japanese troops were sent to Shanghai on January 24, 1932. Troops remained in the Shanghai vicinity and occupied the Shanghai-Woosung Railway Station. From there, the Japanese army commenced the battle for Shanghai.<sup>115</sup> The advancing Japanese soldiers, under the command of MATSUI, inflicted terrible atrocities upon the Chinese inhabitants in Shanghai and other parts of north-east central China. The Shanghai battle lasted intermittently for the next five years and resulted in serious crimes, including murder and rape, being inflicted on the inhabitants of the area. On November 12, 1937 all of Shanghai finally capitulated to the Central China Expeditionary Force commanded by MATSUI,<sup>116</sup> who had taken control of this force three months earlier in August 1937.<sup>117</sup> The Japanese army continued to rape, murder, and plunder as it advanced to Nanking. For example, the army occupied the town of Soochow in late November 1937 and murdered many of the citizens whom had not fled before the arrival of the Japanese troops.<sup>118</sup>
127. On December 12, 1937, MATSUI’s forces entered Nanking (then China’s capital) and, as found by the IMTFE, there followed “a long succession of [the] most horrible atrocities committed by the Japanese Army upon helpless citizens.”<sup>119</sup> These crimes were so notorious they became known internationally as the “Rape of Nanking.” Because the large-scale rape of Chinese women in both the Shanghai and Nanking assaults had a significant effect on the decision to expand the “comfort women” system, these crimes will be addressed in greater depth *infra*.
128. After the Nanking invasion, General HATA replaced MATSUI for a brief period as Commander of the China Expeditionary Army in March 1938. Under HATA’s command and supervision, the Japanese troops continued their campaign of rape, murder, and pillage as they conquered major sections of southern China. According to findings of the IMTFE, “in 1938 and again from 1941 to 1944 when HATA was in command of expeditionary forces in China troops under his command committed atrocities on a large scale and over a long period of time.”<sup>120</sup> Specifically, the soldiers under HATA’s command “freely indulged in murder, rape, incendiarism and many other atrocities” throughout the districts of Hainan Island, Canton, Hankou, Changsha, Kweilin and Liuchow.<sup>121</sup> The IMTFE further found that “HATA’s original task was to conquer the

<sup>111</sup> IMTFE Judgement, p. 49796.

<sup>112</sup> IMTFE Judgement Appendix E, p. 123.

<sup>113</sup> IMTFE Judgement, p. 48528.

<sup>114</sup> IMTFE Judgement, pp. 48526-48529.

<sup>115</sup> IMTFE Judgement, pp. 49089-49090.

<sup>116</sup> IMTFE Judgement, p. 49613.

<sup>117</sup> List of Defendants and Titles.

<sup>118</sup> IMTFE Judgement, (Roling), p. 392.

<sup>119</sup> IMTFE Judgement, p. 49815.

<sup>120</sup> IMTFE Judgement, p. 49754.

<sup>121</sup> IMTFE Judgement, pp. 49613-49617.

triangular area between the cities of Shanghai, Nanking, and Hangchow.” Having successfully secured this triangular area, HATA’s troops, numbering 300,000 to 400,000, proceeded to move “deep into the interior of China” and captured a number of cities.<sup>122</sup>

129. While HATA waged his campaigns from June 3, 1938 to August 1939, ITAGAKI was appointed as Minister of War. A notable intensification of the war manifested by extensive attacks on China followed his appointment.<sup>123</sup> The IMTFE found that “Japan had hoped the Hsueh Battle would be decisive by engaging and defeating the main forces of the Chinese Army. As the Chinese Government did not yield, even after the capture of Hsueh, the Japanese Supreme Command proceeded with the plan to drive on to Hankou to deliver yet another blow to the Chinese in the hope of reaching an end of the Chinese war.” ITAGAKI, realizing that the war threatened to become a protracted one, sought to bolster the determination of the Japanese people” and told a news agency “that the Army must be prepared to continue hostilities perhaps for the next ten years.”<sup>124</sup> From September 1939 to July 1941, ITAGAKI served as the Chief of Staff of the China Expeditionary Forces.<sup>125</sup> HATA served as War Minister, from August 1939 to July 1940, and was succeeded by TOJO serving from July 1940 to December 1941. HATA later returned from July 1940 to November 1944 to serve as Commander of the China Expeditionary Army.<sup>126</sup>
130. The subjugation of China by Japan entrenched Japan’s aggressive policies and domination that resulted in unimaginable suffering during the first half of the twentieth century in every Japanese-occupied Asian territory, stretching from China to the most southerly Pacific islands. The IMTFE found that the Japanese military repeatedly perpetrated atrocities, such as rape, torture, death marches, and massacres, against the civilians of the occupied territories.

### 5. *The Philippines*

131. The Philippines was made part of the commonwealth of the United States in November 1935 in exchange for the recognition and acceptance by the United States of Japan’s pre-eminent interest in the Japanese Co-Prosperity sphere which included China, French Indo-China, the Dutch East Indies, Malaysia, Thailand, and the Philippines.<sup>127</sup> In early December 1941, Japan declared war on the United States by bombing its naval base in Pearl Harbor, Hawaii, and other US military bases in the Pacific, including Davao City in the southern Philippines.<sup>128</sup> Following the attack, Japanese forces landed in the northern Philippines on December 10, 1941, declared Manila an open city on December 26, and formally established its military regime in that territory in early January 1942.
132. At the time of the Japanese occupation of the Philippines, General TERAUCHI, was Commander in Chief of the Southern Area Armies, which included the 14<sup>th</sup> Area Army used to invade the Philippines where he was stationed subsequent to the establishment of the military regime.<sup>129</sup> The 14th Area Army was under the direct command of Generals

<sup>122</sup> IMTFE Judgement, pp. 49259-49260. The cities include Hsueh, Kaifeng, Matang, Kiukiang, Singyang, and Hankou.

<sup>123</sup> IMTFE Judgement, pp. 49261-49263.

<sup>124</sup> IMTFE Judgement, p. 49262.

<sup>125</sup> IMTFE Judgement (Roling), p. 449; Exhibit 224.

<sup>126</sup> IMTFE Judgement (Roling), p. 391; and Appendix E, p. 121.

<sup>127</sup> IMTFE Judgement, pp. 49411-49412.

<sup>128</sup> IMTFE Judgement, pp. 49569-49573.

<sup>129</sup> Exhibit 224.

Homma, Masaharu between 1941 to August 1942, Kuroda, Shigenori from 1943 to 1944, and YAMASHITA beginning September 1944, under whose command the rape of women at Mananique was carried out as part of a “subjugation” operation, discussed hereinafter.

## 6. *Malaysia*

133. The Japanese forces invaded Malaya on December 8, 1941, about an hour before they began their attack on Pearl Harbor and air-raided Singapore just hours later. While Singapore was being invaded, the 25<sup>th</sup> Army was under Lieutenant-General YAMASHITA, which was a unit of the Southern Army commanded by TERAUCHI, landed in the north of the Malay Peninsula.<sup>130</sup> By February 15, 1942 the Japanese military captured the whole of the Malay Peninsula and Singapore. YAMASHITA set up a military government organization there. During this time, from April 1945 to August 1945, ITAGAKI served as Commander of the 7<sup>th</sup> Area Army with headquarters in Singapore, with subordinate sub-divisions defending other parts of Malaya and Indonesia.<sup>131</sup>
134. Soon after the occupation of Singapore, YAMASHITA ordered the garrison commanders to “bring about the total suppression of the Overseas Chinese Anti-Japanese elements in the whole of the island” in three days, beginning on February 21, 1942.<sup>132</sup> Chinese inhabitants were specifically targeted for massacres because they had assisted the Allied Forces against the advancing Japanese troops. The massacres were arbitrarily carried out by means of a program called the Concentration for Inspection and Identification, under which the decision to kill was left to the discretion of the squad leaders.<sup>133</sup> Soldiers took many of the victims in military trucks to rural areas and shot or drove them en masse into the forests to be executed by machine gun.<sup>134</sup> This experience shows the lengths to which the Japanese went in perpetrating crimes against civilians in the occupied territories and the targeting of particular groups. This is consistent with the behaviour of Japanese troops in other occupied countries.

## 7. *Indonesia*

135. Indonesia, formerly known as the Dutch East Indies, was a colony of the Netherlands throughout the Asia-Pacific War. The IMTFE found that the Japanese had long planned the invasion of Indonesia in order to “secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans and of all islands therein.”<sup>135</sup> Indonesia appeared to be a country of unlimited supplies of raw material, most importantly oil, necessary to aid the war effort.<sup>136</sup> To this end, in March 1942, the Japanese military invaded the island of Java in the Indonesian Archipelago (having apparently landed on Indonesian soil via Borneo),<sup>137</sup> overthrowing Dutch sovereignty, and subjugating the Allied armies there.<sup>138</sup> The invasion and occupation of Indonesia was

<sup>130</sup> Exhibit 144, submitted by the Malaysian Prosecution, December 10, 2000.

<sup>131</sup> IMTFE Judgement (Roling), p. 449.

<sup>132</sup> Exhibit 144, p. 35.

<sup>133</sup> Exhibit 144, p. 35; IMTFE Judgement (Roling), p. 397.

<sup>134</sup> Exhibit 144, p. 36.

<sup>135</sup> IMTFE Judgement (Roling), p. 378.

<sup>136</sup> IMTFE Judgement (Roling), pp. 396-397.

<sup>137</sup> IMTFE Judgement (Roling), p. 396.

<sup>138</sup> Live Testimony, by Jan Ruff-O’Herne, witness for the Dutch Prosecution, December 10, 2000.

accompanied by atrocities common to the Japanese aggression, including sexual violence. For example, the IMTFE found that, apparently in retaliation to the demolition of the oil fields at Tjepu, Java, the men were massacred and the women “were raped several times in the presence of the commanding officer.”<sup>139</sup>

136. As aforementioned, General TERAUCHI was Commander in Chief of the Southern Area Army from November 1941 until the end of the war. Thus, besides being the Supreme Commander of the Japanese divisions occupying the Philippines and Malaysia, he served in the same capacity over the forces occupying Indonesia. General Dohihara, Kenji functioned as Commander of the 7<sup>th</sup> Army from April 1944 to April 1945, a command that included Java, Sumatra, and other Indonesia territories, as well as Malaysia.<sup>140</sup> From April 1945 to the end of the war, General ITAGAKI followed as the Commander of the 7<sup>th</sup> Army divisions still directly operating in areas mentioned above.<sup>141</sup> Other commanders included Harada, Kumakichi, Commander of the 16<sup>th</sup> Army stationed in Indonesia, from November 1942 to April 1945, Vice Admiral Takhashi, Ibo, Commander in Chief of the Southwest Area Fleet, from April 1942 to September 1942, and Vice Admiral Okouchi, Denshichi, Commander of the Southwest Area Fleet, from November 1944 to August 1945.

#### **8. *The Dutch Territories***

137. The IMTFE also found that the Japanese army specifically targeted Dutch civilians for abuse. In March 1942, the Japanese massacred some 80 to 100 Dutch civilians by driving them into the sea while shooting at them and chopping off their limbs.<sup>142</sup> Soon after the Java invasion, the Japanese military separated the Dutch expatriate population into groups of men, and women and children, interned each group in different Japanese concentration camps and committed atrocities against them in these camps.<sup>143</sup> One survivor witness before this Tribunal, Jan Ruff-O’Herne described the horrible conditions suffered by the women and children including lack of proper shelter, sanitary facilities, and food. She recalled how rats chewed at the feet of the children. She also testified that the internees were beaten and tortured by being forced to stand in the sun for many hours for imaginary breaches of Japanese Military discipline, such as taking scraps of food from the rubbish heaps, which was regarded as hoarding ‘contraband.’

#### **9. *East Timor***

138. The territory of East Timor had been a colony of Portugal since 1515 and remained so throughout the Asia-Pacific War until 1975. On February 20, 1942, the Japanese troops landed in East Timor and advanced from its capital Dili to other regions in the south.<sup>144</sup>
139. From 1941 until the end of the war, General TERAUCHI was Commander in Chief of the Southern Area Armies. Under his command the subdivision of the Southern Area Armies, the 38<sup>th</sup> Army Division invaded East Timor. The 48<sup>th</sup> Army Division replaced them in September 1942.

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<sup>139</sup> IMTFE Judgement (Roling), p. 397.

<sup>140</sup> IMTFE Judgement (Roling), p. 444.

<sup>141</sup> IMTFE Judgement, p. 49798.

<sup>142</sup> IMTFE Judgement (Roling), p. 39.

<sup>143</sup> Live Testimony, Jan Ruff-O’Herne.

<sup>144</sup> East Timorese Prosecution, East Timorese Indictment, p. 3, para 1.

140. Atrocities were inflicted on the civilian population during the Japanese occupation of East Timor. Soldiers massacred many inhabitants, sometimes entire families.<sup>145</sup> One of the witnesses before this Tribunal, Esmeralda Boe, testified that Japanese soldiers forced civilians to labour for the Japanese to supply food and build housing for their troops. Other forced labour included planting in the fields all day, and logging timber. As elsewhere, torture, including sexual torture, was inflicted upon the civilians.

### **10. Conclusion**

141. The Judges adopt the pertinent findings of the IMTFE Judgement and consider that the evidence adequately proves 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 troops generally demonstrated a complete lack of respect for the safety, dignity, and rights of the inhabitants of both annexed and occupied territories. The abuse of civilians and civilian internees was extensive and pervasive throughout the region, most commonly taking the form of murder, torture, rape, forced labour, and confinement under inhumane conditions. And, as concluded below, rape and sexual slavery as part of the “comfort system.”

## **F. DEVELOPMENT AND OPERATION OF THE “COMFORT WOMEN” SYSTEM**

### **1. The Origins of the Sexual Slavery System: The Rape of Nanking and Related Atrocities**

#### **(a) The First “Comfort” Stations**

142. According to the expert testimony of Professor Yoshimi Yoshiaki and the recorded recollections of Yasuji Okamura, the Vice Chief of Staff of the Shanghai Expeditionary Army, the Japanese army set up its first known so-called “comfort station” in China in 1932, consonant with that army’s movement into China through Manchuria.<sup>146</sup> In March of 1932, Yasuji Okamura, through his Senior Staff Officer Okabe Naosaburo, ordered the establishment of “comfort” facilities in Shanghai. In his memoirs, Yasuji Okamura recalled that he ordered this because rape crimes had been committed by the Japanese troops in Shanghai. Reports of rape prompted him to ask the Governor of the Nagasaki Prefecture to supply a “military comfort women corps,” so as to prevent the occurrence of rape.<sup>147</sup> Yasuji Okamura wrote:

To my shame, I am a founder of the comfort women system. In 1932 when the China Incident occurred, a few rapes were reported. Then I as Vice-Chief of the Staff of the Shanghai Expeditionary Army followed the practice of the Navy and requested of Governor of Nagasaki Prefecture to send a group of comfort women. I was pleased that no rapes were committed afterward.<sup>148</sup>

143. Staff Officer Okabe, writing in his diary, also thought that setting up these facilities would help to alleviate, if not eliminate, occurrences of rape, since “as long as conditions

<sup>145</sup> IMTFE Judgement (Roling), pp. 397-398.

<sup>146</sup> Yoshimi, *Comfort Women*, p. 45; Korean Exhibit, KR4, Inaba, Masao ed., *Materials on General Okamura, Yasuji, Vol 1: Recollections on the Battlefields* (1970), p. 302.

<sup>147</sup> Yoshimi, *Comfort Women*, p. 45; Korean Exhibit, KR4.

<sup>148</sup> Korean Exhibit, KR4.

[were] peaceful and the army [was] not engaged in fighting, these incidents [were] difficult to prevent.” He believed that the army could provide facilities and “options for resolving the troops’ sexual problems.” He stated that “soldiers have been prowling around everywhere looking for women” and he “often heard obscene stories” about their behaviour. Okabe had Lieutenant Colonel Nagami Toshinori implement those “options,” namely the setting up of “comfort stations.”<sup>149</sup>

144. As stated by Okamura, the model for this “comfort station” was based on other facilities already set up by the Japanese navy.<sup>150</sup> These naval facilities occurred as a result of the Japanese Foreign Ministry’s crackdown on licensed brothels, which were viewed as a source of sexually transmitted diseases (STDs).<sup>151</sup> The main objective of the new facilities was to satisfy the sailors’ sexual demands while minimising their exposure to STDs. To this end, the navy reserved and regulated seven “restaurants,” which employed serving women (102 of whom were Japanese, while 29 were Korean) for the exclusive use of navy personnel. The regulations included medical examinations of the “serving women” twice a week by doctors in the presence of Japanese navy personnel, police officers, or Foreign Ministry officials.<sup>152</sup> Thus, both the military and government were overseeing these “comfort” facilities, by the end of 1932, and the emphasis had expanded from protecting the military from sexually transmitted diseases to diverting the perpetration of rape upon women in the community by the troops.
145. The evidence shows that the following year, in March 1933, the “first confirmed military comfort station,” named the “Disease Prevention and Hygiene Facility,” was set up in northeastern China, in the town of Pinquan, for the 14<sup>th</sup> Mixed Brigade.<sup>153</sup> Thirty-five Korean and three Japanese women were in this station wherein they were required to “serve” as “comfort women” and were subjected to regular medical examinations by an army doctor.<sup>154</sup> The Japanese army forbade its military personnel from visiting the licensed brothels in town because they claimed that the prostitutes were all infected with some form of STD. The army actively encouraged the personnel to use the sexual slavery facilities instead.<sup>155</sup>
146. Due, however, to the soldiers’ persistence in visiting the local brothels, and the discovery that some of the newly inducted “Korean comfort women” had already been infected with STDs, the army headquarters issued instructions entitled “Guidelines for Conducting Medical Examinations of Prostituted and Serving Women.” These guidelines stipulated that in addition to those women in the comfort facilities, all the prostitutes in the vicinity had to undergo medical examinations several times a week.<sup>156</sup> The army constantly admonished its soldiers to check the prostitutes’ health certificates, to use condoms

<sup>149</sup> Yoshimi, *Comfort Women*, p. 45, quoting an entry from the Diary of Okabe, Naosaburo, Senior Staff Officer in the Shanghai Expeditionary Force (entry reproduced in Yoshimi’s book).

<sup>150</sup> Korean Exhibit, KR4.

<sup>151</sup> Yoshimi, *Comfort Women*, p. 44.

<sup>152</sup> Yoshimi, *Comfort Women*, pp. 43-44.

<sup>153</sup> Yoshimi, *Comfort Women*, p. 47.

<sup>154</sup> Yoshimi, *Comfort Women*, p. 47, referring to a document in his Fn 12, which was a report from the middle of March 1933 issued by the 14th Mixed Brigade Headquarters, p. 11 (Japanese National Archives).

<sup>155</sup> Yoshimi, *Comfort Women*, p. 47, referring to a document in his Fn 13, which was a report from the end of March 1933 issued by the 14th Mixed Brigade Headquarters, pp. 9-10 (Japanese National Archives).

<sup>156</sup> Yoshimi, *Comfort Women*, p. 47, referring to a document in his Fn 14, which was a report from the beginning of May 1933 issued by the 14th Mixed Brigade Headquarters, p. 9 (Japanese National Archives).



together with disinfecting lubricants, and to wash off their genitals with disinfectant after each visit to the prostitutes or the “comfort” facilities.<sup>157</sup>

147. At the same time, the evidence shows that the Kwantung Army located in Manchuria, where General HATA was a divisional commander in 1933,<sup>158</sup> was also managing at least one “comfort” facility in 1933.<sup>159</sup>

(b) *The Rape of Nanking*

148. The military sexual slavery system became institutionalised in connection with the events leading up to and occurring after the invasion of Nanking, which resulted in a conquest so brutal it became known as the “Rape of Nanking.” In July 1937, Japan embarked on an open and full-scale war against China, causing the dispatch to China of hundreds of thousands of Japanese troops under the command of General MATSUI. As General MATSUI’s troops approached Nanking, they committed murder, torture, rape, and other atrocities on an extraordinary scale.<sup>160</sup>
149. In a cruel paradox, the Rape of Nanking was a significant motivation for the institutionalisation of sexual slavery facilities. These facilities, which were purportedly intended to prevent unrestrained rape of women in the community, substituted a system of highly regulated facilities where a soldier could safely, conveniently, and relatively cheaply satisfy unrestrainedly his sexual urges.
150. The IMTFE heard extensive evidence on the Japanese army’s attack on and conquest of Nanking. It found that Japanese troops in Nanking committed “[w]holesale massacres, individual murders, rape, looting and arson...[In] this period of six or seven weeks thousands of women were raped, upwards of 100,000 people were killed and untold property was stolen and burned.”<sup>161</sup> It further found that sexual violence was rampant:

Death was a frequent penalty for the slightest resistance on the part of a victim or members of her family who sought to protect her. Even girls of tender years and old women were raped in large numbers throughout the city, and many cases of abnormal and sadistic behaviour in connection with these rapes occurred. Many women were killed right after the act and their bodies mutilated. Approximately 20,000 cases of rape occurred within the city during the first month of the occupation.<sup>162</sup>

151. The testimony of Yang Mingzhen before this Tribunal epitomizes the atrocities committed by the Japanese troops. Yang Mingzhen was only six years old in December 1937 when the Japanese officially conquered Nanking. She testified that shortly after the occupation, two Japanese soldiers went to her home where she lived with her parents. She testified:

<sup>157</sup> Yoshimi, *Comfort Women*, p. 47.

<sup>158</sup> IMTFE Judgement, Appendix E, p. 121.

<sup>159</sup> Exhibit 17 (Korean Exhibit KG2) Document authored by the 14th Mixed Brigade, entitled “Ten Day Report on Sanitation Affairs for April 11-20, 1933,” (Japanese National Archives).

<sup>160</sup> IMTFE Judgement (Roling), p. 391.

<sup>161</sup> IMTFE Judgement (Roling), pp. 453-454.

<sup>162</sup> IMTFE Judgement (Roling), p. 389.

[The soldiers] kicked my father....My mother was abused. I was still very small but they undressed my trousers. I was just scared and my father who tried to save me was hit very badly by the soldiers and they cut him....[on] his neck three times....They abused my mother and me....I still remember that they treated me very badly. I resisted and they cut me in my face. I still have that scar....It's on my eye on my forehead.

152. Yang Mingzhen testified that she suffered great psychological and physical trauma as a result of these attacks on her and her family. Yang Mingzhen also witnessed the rape, sexual mutilation, and eventual death of a teenage girl, as well as the rape and murder of a twelve-year-old girl by Japanese soldiers.<sup>163</sup>
153. The invasion of Nanking and its attendant carnage produced tremendous outrage in the international community. The evidence shows that although many newspaper correspondents, who were largely responsible for informing the world about the atrocities committed in Nanking, had departed Nanking for Shanghai soon after the invasion, the remaining foreigners continued to carefully document “the hourly outrages” that occurred there.<sup>164</sup> The IMTFE noted that members of the Diplomatic Corps and Press together with the Japanese Embassy in Nanking “sent out reports detailing the atrocities committed in and around Nanking” to their respective governments as well as to the Japanese government. The Japanese Embassy officials sent reports to the Japanese Minister at Large to China.<sup>165</sup> The representative of the German government informed his superiors about the “atrocities and criminal act[s] not of an individual but of an entire Army, namely, the Japanese,” and he later characterised the army as “bestial machinery.”<sup>166</sup> During the invasion, the diplomatic corps and foreign civilians in the Nanking Safety Zone not only reported on the extent of the atrocities but also protested strenuously against the commission of these crimes by the Japanese troops. The Secretary of the International Committee for the Safety Zone “filed two protests a day for the first six weeks,” and foreign governments also complained about the crimes.<sup>167</sup> According to IMTFE, even public opinion in Japan was unfavourable towards the behaviour of the Japanese troops in Nanking.<sup>168</sup>
154. The Japanese government’s reaction to the reports received about the atrocities occurring in Nanking was varied. The IMTFE found that some of the officials on the lower rungs of the Japanese government, particularly the embassy officials in Nanking, were interested in making amends and doing something about the behaviour of the Japanese troops. They stated that the “[a]rmy was determined to make it bad for Nanking, but, that the Embassy officials were going to try to moderate the action.”<sup>169</sup> Consequently, the Japanese embassy officials sent out reports about the atrocities to their government and encouraged foreign missionaries to generate publicity in Japan about the brutalities, “so that the Japanese Government would be forced by public opinion to curb the Army.”<sup>170</sup>

<sup>163</sup> Chinese Indictment, p. 6.

<sup>164</sup> Exhibit 209, submitted by the Japanese Prosecution, December 8, 2000.

<sup>165</sup> IMTFE Judgement (Roling), pp. 390-391.

<sup>166</sup> IMTFE Judgement (Roling), p. 389.

<sup>167</sup> IMTFE Judgement (Roling), p. 390.

<sup>168</sup> IMTFE Judgement (Roling), p. 391.

<sup>169</sup> IMTFE Judgement (Roling), p. 390.

<sup>170</sup> IMTFE Judgement (Roling), p. 390.

155. Other Japanese government officials, however, were not as concerned as the embassy officials to make amends. Instead, they were anxious to assess ‘damage control’ regarding the reputation of the Japanese army. The IMTFE confirmed that higher ranking members of the Japanese government received reports from their embassy officials in Nanking and from members of the diplomatic corps and press regarding the criminal behaviour of the Japanese troops in Nanking. Japanese government members who received reports of the Nanking atrocities included the Foreign Minister, Hirota Koki, who in turn forwarded these reports to the War Ministry where UMEZU was the Vice Minister of War. The IMTFE went on to find that these reports were discussed at Liaison Conferences, which were normally attended by the Prime Minister, War and Navy Ministers, Foreign Minister Hirota, Finance Minister Kaya, and the Chiefs of the Army and Navy General Staffs. News reports of the atrocities were widespread. Minami, who was serving as Governor-General of Korea at the time, admits that he read of these reports in the Press. Following these unfavourable reports and the pressure of public opinion aroused in nations all over the world, the Japanese government recalled MATSUI and approximately 80 of his officers but took no action to punish any of them. MATSUI, after his return to Japan on 5 March 1938, was appointed a Cabinet Councillor and on 29 April 1940 was decorated by the Japanese government for his “meritorious services” in the China War.<sup>171</sup>
156. The Judges consider that the Japanese government’s attitude to the Rape of Nanking was one of callous disregard. That the government would use the outrage over the mass rapes as an excuse to set up “comfort stations” is an added injustice to both the victims of the Nanking atrocities and to the “comfort women.”

## 2. *Institutionalisation of the Sexual Slavery System*

### (a) *Sexual Enslavement in China and of Chinese Girls and Women*

157. 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,<sup>172</sup> 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.<sup>173</sup> The evidence demonstrated another reason was to offer “comfort” to the soldiers by providing an avenue to release for their pent-up emotions, tensions, and frustrations resulting from the bleak, harsh, and arbitrary discipline and conditions they had to endure.<sup>174</sup> Another reason emerging from the evidence was to protect against and prevent the likelihood of spying and dissemination of army secrets that might occur if the soldiers visited local brothels. The Japanese army believed that “building its own comfort stations

<sup>171</sup> IMTFE Judgement (Roling), p. 391.

<sup>172</sup> Yoshimi, *Comfort Women*, p. 69, referring to the 1939 report of Matsumura Takeshi, Chief of the Medical Branch of the 21st Army (Article 2).

<sup>173</sup> Yoshimi, *Comfort Women*, pp. 45 & 66, referring to the recollections of Okamura Yasuji (discussed above). For example, a document issued in June 1938, entitled “Notification of Warnings concerning the Conduct of Military Personnel toward Local Residents” states that “the trigger causing such potent anti-Japanese sentiment [in the North China Area] is the widespread diffusion of news about rapes.” See Registry No. 222-d and 223.

<sup>174</sup> Yoshimi, *Comfort Women*, pp. 72-74, referring to a document entitled “The Communist Party’s Truth about the Ideological Campaign to Undermine our Troops and the Means to Stop it,” (April 5, 1939, Japanese National Archives), and other documents in Japanese (with no English translations).

and conducting regular supervision and surveillance of them was the best policy” to contain army secrets.<sup>175</sup>

158. According to the expert testimony of Professor Yoshimi, referring to an excerpt from the diary of Iinuma Mamoru, the Central China Area Army ordered the Shanghai Expeditionary Army to establish “comfort stations” in the vicinity of Nanking. Their purpose, according to Professor Yoshimi, was to redirect the sexual demands of the numerous troops from committing widespread rapes against the general female population and stifle the growing outrage of the international and local communities as a result of the rapes.<sup>176</sup> Iinuma Mamoru personally undertook the execution of those orders, and implemented plans for establishing such stations on December 19, 1937, just six days after the conquest of Nanking.<sup>177</sup> At this time, Prince Assaka Nomimia, a cousin to Emperor HIROHITO, commanded the Shanghai Expeditionary Force, and thus was Iinuma Mamoru’s immediate superior.<sup>178</sup>
159. At the same time that “comfort” facilities were being erected in Shanghai, the Japanese military set up facilities in other parts of China as well. On December 18, 1937, after the fighting around the cities of Zhenjiang and Yangzhou had ended, the 3<sup>rd</sup> Division Medical Corps hastily established a military “comfort station” and procured women for it.<sup>179</sup> The purpose for establishing such facilities had expanded to include the providing of comfort, relaxation, and avenues for releasing sexual tensions to the thousands of Japanese soldiers deployed to fight for and further Japan’s imperial ambitions.
160. As the Japanese army moved across China in 1938, it set up “comfort stations” in rapid succession. By the end of January 1938, two facilities were established in Changchow, with one managed by a unit directly under the control of the Shanghai Expeditionary Force. The Shanghai Expeditionary Force also installed another station in Yangjiazhai.<sup>180</sup>
161. Military “comfort stations” were established simultaneously in northern China in the first half of 1938. According to the expert witness Professor Yoshimi, in 1938, Okabe,<sup>181</sup> now Chief of Staff of the North China Area Army commanded by General TERAUCHI, recorded in his “Written Notification of Warnings on the Treatment of the Local Population by Military Units and Personnel” that he ordered each unit under his command to set up “comfort stations.” Okabe felt that these stations were necessary in order to “stamp out the outbreaks” of rape which were directly triggering widespread rage and anti-Japanese reactions among the Chinese. His comments are noteworthy:

According to various reports, the trigger causing such potent anti-Japanese sentiment is the widespread diffusion of news about rapes committed by Japanese military personnel in various areas....Naturally, such self-defense organizations...which have fiercely resisted the raping and pillaging of

<sup>175</sup> Yoshimi, *Comfort Women*, p. 74, referring to an Army Report of the General Staff of the 25th Army stationed in Singapore (1942).

<sup>176</sup> Yoshimi, *Comfort Women*, pp. 49-50; live Testimony of Yoshimi, Yoshiaki, Expert Witness for Chief Prosecutor Sellers, December 9, 2000; Exhibit 222-A, Slide entitled “Excerpts from the Diary of Iinuma Mamoru, Chief of the Staff of the Shanghai Expeditionary Force,” submitted December 9, 2000.

<sup>177</sup> Yoshimi, *Comfort Women*, p. 50.

<sup>178</sup> Live Testimony of Yoshimi.

<sup>179</sup> Yoshimi, *Comfort Women*, p. 51.

<sup>180</sup> Yoshimi, *Comfort Women*, pp. 51-53. Shanghai is located far south of Korea, and a little south of Nanking.

<sup>181</sup> Exhibit 225, Yoshimi’s written opinion entitled “The Chain of Command in the Japanese Military and Japanese Government” puts the date as June 1938.

soldiers since time immemorial, were inflamed, but now it is the norm for the entire local population of each area to be so enraged, particularly by rapes, as to seek revenge even unto death....Accordingly, not only are rapes illegal acts in each of these areas, but they also undermine public order and obstruct the combat activities of the military as a whole. We ought to call them acts of high treason, that threaten the nation....We must stamp out the outbreaks of these acts. Any commanders who disregard these orders can only be called disloyal subjects....Along with strict controls on soldier's individual behavior of the aforementioned type, the provision of facilities for sexual comfort as quickly as possible is of great importance, [as it will] eliminate cases in which people violate the prohibition [on rape] for lack of facilities.<sup>182</sup>

162. By November 1938, the Japanese 21<sup>st</sup> Army, commanded by General ANDO, had moved into southern China. According to the "Wartime Report (Relating to Line of Communications)," by April of the following year, the army supervised approximately 1,000 "comfort women" in areas where the military police squads were stationed.<sup>183</sup> According to the evidence, about 850 of these women were regulated by the military, and the remaining 150 were there under the auspices of the individual units commanded by the 21<sup>st</sup> Army, having been summoned from the homeland of each unit.<sup>184</sup>
163. The 21<sup>st</sup> Army had sent out a request to the Home Ministry and the Governor General of Taiwan, in a document entitled "Inquiry on Women Travelling to China," to recruit women for the "comfort stations."<sup>185</sup> As a consequence, by April 1939, the 21<sup>st</sup> Army established "comfort" facilities in Guangdong, where the approximately one thousand women procured were held. Many of the stations in the Guangdong area utilised Korean "comfort women," with Taiwanese and Chinese women constituting most of the remainder.<sup>186</sup> Korean women complained to the soldiers that they were tricked into becoming "comfort women" through answering an advertisement requiring the services of practical nurses.<sup>187</sup>
164. In 1940, the Chief of the Medical Section of the 21<sup>st</sup> Army reported to a meeting of the Ministry of War Medical Bureau that to combat the spread of venereal diseases, the army was "importing one comfort woman for every 100 soldiers."<sup>188</sup> The 21<sup>st</sup> Army established sexual slavery facilities in the municipalities of Guangzhou, Henan, Foshan, Hainan Island, Sanshui, Jiujiang, Zengcheng, and Shilong, to which these women were sent.<sup>189</sup> Eventually the number of "comfort women" under the control of the 21<sup>st</sup> Army rose to 1,600.<sup>190</sup>

<sup>182</sup> Yoshimi, *Comfort Women*, pp. 54-55, referring to Chief of Staff Okabe's publication entitled 'Written Notification of Warnings on the Treatment of the Local Population by Military Units and Personnel'; Exhibit 225, Yoshimi's written opinion entitled "The Chain of Command in the Japanese Military and Japanese Government."

<sup>183</sup> Yoshimi, *Comfort Women*, p. 56; Korean Exhibit, KB3.

<sup>184</sup> Yoshimi, *Comfort Women*, p. 56; Korean Exhibit, KB3. According to the Korean exhibit, these military police squads consisted of nationals from the occupied territories such as China.

<sup>185</sup> Exhibit 16 (Korean Exhibit KB2).

<sup>186</sup> Korean Exhibit, KB4.

<sup>187</sup> Korean Exhibit, KB4.

<sup>188</sup> Yoshimi, *Comfort Women*, p. 56, referring to a report made in a meeting with the Ministry of War Medical Bureau.

<sup>189</sup> Yoshimi, *Comfort Women*, p. 56; Exhibit 225.

<sup>190</sup> Yoshimi, *Comfort Women*, p. 56.

165. Simultaneously, in October 1938 the Headquarters of the Central China Expeditionary Army, commanded by General HATA, being deeply concerned about “the prevention of a recurrence of the Nanking Massacre and Rape,”<sup>191</sup> gave orders through the 11<sup>th</sup> Army staff officer Muranaka to establish “comfort stations” in Hankou.<sup>192</sup> Regarding the “comfort women” and their dealers in Shanghai and Nanking as military suppliers, the army transported the women immediately to the Hankou Depot Headquarters,<sup>193</sup> where they “lent two private houses for each comfort station in Jiqingli, Hankou.”<sup>194</sup> These facilities became operational in November 1938<sup>195</sup> and operated on a ticketing system adopted to organise the soldier’s visitations.<sup>196</sup> Thus, as the war intensified, the Japanese military found it imperative to set up additional facilities in order to cater to the sexual demands of its troops.
166. As the Japanese military mobilised an estimated eight hundred thousand troops of the Kwantung Army in 1941 along the northeastern border between the then USSR and China, the Kwantung Army, commanded by General UMEZU, Yoshijiro developed a plan to secure and import an additional twenty thousand Korean “comfort women” in order to service his troops.<sup>197</sup> To effectuate this plan, staff officer Hara, Zenshirou requested the assistance of the Government General of Korea, whose governor at the time was Minami Jiro.<sup>198</sup> According to Murakami, Sadao, a non-commissioned officer assigned to Officer Hara who took charge of “the transmission and communication of orders, distribution, meeting with dealers, and other practical business,” some 3,000 Korean women were procured and sent to northeastern China.<sup>199</sup> Other sources put the number of Korean women procured for this purpose as high as 8,000,<sup>200</sup> or 10,000.<sup>201</sup> The evidence suggests that the original plan was to “recruit” Japanese “comfort women,” but not enough of them were secured, so Korean women were acquired to make up the difference.<sup>202</sup>
167. During the war in the Asia-Pacific, the Japanese military continued to establish facilities designed to provide sexual services to its troops. As excruciatingly evident in the testimony below, these facilities were not brothels staffed with voluntary workers and that merely allowed Japanese soldiers a place to go so that they could obtain sexual release conveniently and safely. They were places – hotels, homes, tents, caves, and factories – of unspeakable horror, facilities where women were enslaved against their will and repeatedly raped and otherwise brutalised for months or years on end, exclusively for the benefit, and purportedly to satisfy the sexual demands, of members of the Japanese military.

<sup>191</sup> Korean Exhibit, KR6, p. 39, affidavit document entitled “Hankou ‘Comfort Stations’”, originally authored by Kenichi Nagasawa, an army doctor belonging to the 11th Army Depot Headquarters in Hankou.

<sup>192</sup> Korean Exhibit, KR6, pp. 42-49.

<sup>193</sup> Korean Exhibit KR6, p. 50.

<sup>194</sup> Korean Exhibit, KR6, p. 53.

<sup>195</sup> Korean Exhibit, KR6.

<sup>196</sup> Korean Exhibit, KR7, pp. 212-213 (December 10, 1938), affidavit document entitled “Outline of the Situation of the 2nd Army,” authored by the Headquarters of the 2nd Army which was incorporated into the 11th Army in December 1938.

<sup>197</sup> Yoshimi, *Comfort Women*, p. 57.

<sup>198</sup> Yoshimi, *Comfort Women*, p. 57; Exhibit 225 (Yoshimi’s Written Expert Opinion).

<sup>199</sup> Korean Exhibit, KG3, referring to a Letter from Murakami to Senda, Kako.

<sup>200</sup> Exhibit 225, Written Opinion of Expert Witness Yoshimi, referring to the books written by Shimada Toshihiko, *The Kwangtung Army*; and Senda Kako, *Military Comfort Women*.

<sup>201</sup> Yoshimi, *Comfort Women*, p. 57.

<sup>202</sup> Korean Exhibit, KG3, referring to a Letter from Murakami to Senda, Kako.

168. Wan Aihua, one of the Chinese victim-survivors to give evidence before this Tribunal, testified that the Japanese army captured her in 1943 when she was 14 years old. Wan Aihua stated:

I was taken into a hole. There was a room inside the hole, but I was taken into the back of the hole and I was raped there. It was a cave, sort of, then I was undressed suddenly, all my garments was taken off and they threatened me...they would kill me if I say anything, if I utter any words. So I was scared; I couldn't say anything...Five soldiers came in at the same time and they raped me...it was like gang rape...I was detained there for a while and every day I was raped...I felt I had no other choice but to obey them. Of course, I resisted but I had no other choice...I was tied to a tree and raped everyday. Everyday, Japanese soldiers came in and I was raped.

169. According to Wan Aihua's testimony, she eventually escaped but was soon recaptured by the Japanese, who subsequently detained her for another 20 days in the same cave of her previous detention where she was tied to a tree and raped everyday. She escaped again and the Japanese soldiers captured her again, meting out more of the same inhumane treatment she experienced after her first recapture. She testified:

I was hit and they brutalised me...They tied my hands to the tree so I was sort of hanged from the tree.... So my hands were sort of pulled and I was hit upon all my body and after they raped me they put me into the river, into the water...It was winter time, perhaps in January. It was chilling cold, even the river got frozen...and I was sort of naked in the chilling cold.

170. These 'punishments' went on for several weeks. Each time they put Wan Aihua back into the cave, the soldiers raped her repeatedly. Eventually she lost consciousness and the Japanese soldiers threw her into a nearby river. She testified that an elderly man saved her from drowning.
171. Yuan Zhulin, another Chinese survivor, testified that she was deceived into becoming a "comfort woman" at the age of 18. She testified:

[A] local woman...praised to me that my baby was a very pretty child and she offered me a very profitable job, that is washing the dishes and clothing...[A]t that time I didn't accept the offer and then the woman told that I would regret it and...that she wouldn't lie to me because she was a Chinese woman...I was very poor and had to support five of my family members and I decided to accept the offer. On that same day, I took a car and I went out...[O]n arrival, it was the base of a Japanese Army and there were Japanese soldiers carrying guns on the sentry position and I was very scared and started to cry and told...the Chinese woman that she told me a lie...I said I didn't want to stay there and I begged her to let me go...[T]he Japanese soldiers and the person managing the comfort station came out and tried to take me inside and I resisted but...they started to abuse me and hit me. It was really terrible.

172. Yuan Zhulin described how she was “sexually abused” continuously for fifteen months. As a “comfort woman,” she was given the Japanese name of Masako, which was placed on a plaque outside her room. The Japanese soldiers first had to buy a ticket to gain access to her. There would usually be a long line of Japanese soldiers waiting outside the comfort station. One soldier treated her kindly while the other soldiers abused her. She testified:

[O]ther Japanese soldiers were all very inhumane and they were very, very atrocious and some of the Japanese soldiers changed condoms four times during sexual intercourse with me and it hurt so much I could not even sit. I could not even lie down to sleep. I could not even sleep freely...[W]hen there was a long queue outside we were given medicine and that medicine was a jelly sort of cream and she [the wife of the proprietor] said, if it hurt you, put some cream on to the condom and it can help you alleviate your pains....There was no way to escape so I just had to continue as a comfort woman.

173. Yuan Zhulin was repeatedly raped and forced also to have sex without the protection of condoms because the Japanese soldiers believed that the women were free of sexually transmitted diseases. During one period of her enslavement, a Japanese officer monopolised all her services and he would inflict additional abuses on her if she did not immediately obey his every command.
174. Yuan Zhulin testified that she felt that escape was extremely difficult. Nonetheless, she finally managed to escape, though she was subsequently recaptured and tortured as punishment and as an example to other women who might be tempted to escape. The “comfort station” management also allowed her to go out of the station once when her daughter died, but she had to return to the station before her daughter’s burial. She eventually managed to escape again and this time remained free living together with a kind Japanese soldier until the war ended. She spent a total of fifteen months at the “comfort” facility where she was sexually enslaved without payment.
175. Based on the aforementioned documentation and testimony of both the survivors and the experts, it is clear that from the time of the first incursion into mainland China, the Japanese military developed, with great haste and urgency, an extensive system of military sexual slavery facilities. It was the norm for the highest ranking officers in the Expeditionary Forces, through their immediate staff subordinates, to establish sexual slavery facilities and to request or authorise the procurement of women for these “comfort stations,” partially in order to divert their troops’ sexual demands to the “comfort women” and avoid rape of Chinese women. Other significant purposes included the control of sexually transmitted diseases. Yet according to the testimony of Professor Yoshimi, the “comfort system” prevented neither the rape of community women nor the spread of sexually transmitted diseases.
176. According to the expert opinion of Dr. Hayashi, Hirofumi the army and navy chiefs and the Governors-General had direct access to the Emperor.<sup>203</sup> When the Sino-Japanese War began in 1937, preceding the invasion of Nanking and the intensification of establishing comfort facilities, the Government-Military Liaison Conference was held to decide state policy. According to Dr. Hayashi, within the Liaison Conference the Imperial

<sup>203</sup> Exhibit 40-a, slide entitled “The De Facto System of the Japanese Empire until August 1945,” accompanying the expert testimony of Dr. Hayashi, Hirofumi, witness for the Chief Prosecutor.



Conference emerged when particularly important matters had to be dealt with. The Emperor, the military, and Cabinet leaders comprised the Imperial Conference which acted as the main decision making body of the state.<sup>204</sup> It is also significant that at least one member of the royal family was involved, through his immediate subordinate, in the setting up of sexual slavery facilities around Nanking.

(b) *Sexual Enslavement of Taiwanese Girls and Women*

177. 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 Japan’s colony, Taiwan, as a useful source of girls and women.
178. In late 1938, Japanese personnel went to Taiwan to recruit women for the “comfort” facilities in China. According to the expert testimony of Professor Hayashi, the Japanese recruited these 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.<sup>205</sup> The TCTC was tasked with building “comfort stations” and other facilities, including roads and wells, in Hainan Island, and with bearing the cost of such construction.<sup>206</sup> Then, in early April 1939, the TCTC received and complied with, via their subsidiary Fukudai Company,<sup>207</sup> a request from the research section manager of the Government-General of Taiwan to send ninety comfort women to Hainan Island.<sup>208</sup> A couple of weeks later, on April 21, 1939, the president of the TCTC confirmed to the Director-General of the Taiwanese Government-General that a ship had recently left for Hainan Island transporting “specially required personnel” including three managers and thirteen women between the ages of 17 and 41 for the comfort stations.<sup>209</sup> Two months later on June 19, 1939, the TCTC produced a list of persons to send to Hainan Island after April 1, 1939. This list included labourers, construction workers who were to build the comfort stations, and “specially required personnel,” which was a reference to “comfort women” and persons involved with running the comfort stations.<sup>210</sup>
179. On July 26, 1939, an officer in the TCTC affirmed that the company’s involvement in establishing “comfort stations” on Hainan Island resulted from the request of a joint three-Ministry meeting to the Government-General of Taiwan.<sup>211</sup> Thus high level Japanese officials and private corporations joined forces to actively participate in and maintain the “comfort system” in China and to procure Taiwanese females for the facilities.
180. As noted previously, in 1940, as the need for women to fill the “comfort stations” increased, the 21<sup>st</sup> Army division commanded by General ANDO requested KOBAYASHI, the Governor General of Taiwan, to procure and supply girls and women

<sup>204</sup> Expert Testimony of Dr. Hayashi, Hirofumi.

<sup>205</sup> Expert Testimony of Dr. Hayashi, Hirofumi.

<sup>206</sup> Exhibit 134, submitted by the Taiwanese Prosecution, December 9, 2000.

<sup>207</sup> Expert Testimony of Dr. Hayashi, Hirofumi.

<sup>208</sup> Exhibit 195, entitled “On the Naval Comfort Station in Hainan Island.”

<sup>209</sup> Exhibit 196, entitled “Proper Supply of Materials to Hainan Island,” authored by the TCTC president, April 21, 1939.

<sup>210</sup> Exhibit 197, entitled “List of Persons Associated with Taiwan Colonization Company Who Went Over to Hainan Island (as of June 19, excluding those who returned to Taiwan), Cooperation in Military Activities in Central and South China after the China Incident,” June 19, 1939 (author unknown).

<sup>211</sup> Exhibit 194, entitled “Outline of the Construction Work in Hainan Island,” authored by Mr. Sakai, July 26, 1939.

for the 21<sup>st</sup> Army.<sup>212</sup> This request represented the second known request by the Japanese military to the Government-General of Taiwan to assist in procuring and supplying “comfort women” for the Japanese military.

181. As the testimony of the Taiwanese survivors specifies, the Japanese military supervised and, in some cases was directly involved in, procuring women and girls for the “comfort stations” in China and Taiwan. In Taiwan, the military forcibly used women employed as factory labourers as “comfort women,” transported the women to “comfort stations” on warships, and, once the women were in the facilities, they prevented them from escaping and had the army doctors monitor them for STDs. The witnesses before this Tribunal testified that procurement was carried out in a variety of ways, most typically by deception and force. Once acquired, the women were sexually enslaved.
182. When Lin Shen-Chung (Iyang-Apay) was 16, a local policeman informed her mother that she would be taken to do stage performances and work as a seamstress sewing clothes for the Japanese army. With three others acquaintances with whom she worked, 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.<sup>213</sup> Lin Shen-Chung (Iyang-Apay) testified:

After working nearly three months, 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. Those who forced us to have sex with them included Doctor Miyamodo, Captain Ela, and Deputy Captain Nalida....All I can do to such ordeal was to weep everyday.

183. During her ordeal as a “comfort woman,” Lin Shen-Chung (Iyang-Apay) got pregnant three times. She was required to report them to the Japanese army doctor, and each time she was given an abortion.<sup>214</sup> She returned to her community only after the Japanese army left.
184. Another witness before this Tribunal, Lu Mang-Mei was recruited into the “comfort system” in 1943 at the age of 17, on the pretext that she was going to work as a nurse.<sup>215</sup> Since she and her adoptive family were poor, she thought it would be a good opportunity to accept the offer, saying “I thought that a nurse [was] a good occupation and a nurse can have good pay . . . [and] the term of contract lasted only for one year.”<sup>216</sup> She was taken to Hainan Island in China on a Japanese warship. On Hainan Island, the Japanese told Lu

<sup>212</sup> Exhibit 16, submitted by the Korean Prosecution, December 8, 2000.

<sup>213</sup> Exhibit 140-b, Affidavit of witness Lin Shen-Chung, paras 2-3, submitted by the Taiwanese Prosecution, December 9, 2000.

<sup>214</sup> Exhibit 140-b, paras 4-5.

<sup>215</sup> Exhibit 139, Affidavit of witness Lu Mang-Mei, para 2, submitted by the Taiwanese Prosecution, December 9, 2000; Live Testimony of Lu Mang-Mei, witness for the Taiwanese Prosecution, December 9, 2000.

<sup>216</sup> Exhibit 139, para 2.

Mang-Mei and her two other similarly recruited friends that they were going to work as waitresses in restaurants abroad, which also paid well. They decided to take the waitressing jobs and another Japanese warship filled with passengers and goods took them overseas to Hung-Sa, their final destination. Lu Mang-Mei testified:

Only upon our arrival did we realise it was a comfort women station, rather than a restaurant. This station was managed by Japanese and looked like a Japanese styled dormitory. It was separated by wood boards into different rooms, floored with Tatami. Each girl had one room. This dormitory was situated on the hillside, surrounded with many palm trees. There were salt fields by the sea... There were about thirty-something girls at this station. Thirty of them were Taiwanese and there were some Japanese girls too. The Taiwanese girls had no contact with those Japanese girls. Soldiers were all Japanese. They came by car... The soldiers and military officers had to purchase their tickets from the Manager first and then they looked for the girls. I usually earned several (six or seven) hundred Yen each month. The Manager took a share of sixty percent each time. We have to provide service day and night. Some soldiers stayed overnight with us, in which case we could earn more money. We were not allowed to say no to the soldiers. No service, no money. We could take a walk around the station. They wore condoms. At the first time, I was so scared. I felt cheated to be there and left alone without any relatives or friends. I thought I should not do it and did try to resist... I told the 'customer' not to do it, but he replied "I already bought the ticket." Then I told him that I was supposed to work as a waitress and not 'this'. The 'customer' said "it is said so but it is not true." It was too late for us to realise the truth. All of us cried... I was once pregnant and wanted to go home. Nevertheless, I was still forced to provide service for more than eight months.

185. Lu Mang-Mei was allowed to return home when she became pregnant and had malaria. She stated that she had "obeyed them [the Japanese] in order to live."
186. In 1938, at the age of 17, Teng Kao Pao-Chu was drafted into the sexual slavery system by the local government's district office. She had been working as a singer in a restaurant and was procured as part of the Japanese government's effort to draft "comfort women" from bars and brothels.<sup>217</sup> She received a notice from the district office informing her that she was to be sent to the Guangdong Province in China to work as a "comfort woman."
187. The district office's personnel accompanied her and about twenty other women and girls to the port where they would be taken to China.<sup>218</sup> Teng Kao Pao-Chu and the others were taken first to Guangdong, and then on to Fou-Shan in a military truck, finally arriving in Jing-Shan-Si. There, the Japanese forced the women to provide for a month sexual services to the troops there before shipping the women to Burma via Hong Kong and Singapore. Teng Kao Pao-Chu travelled with the Japanese army as it moved around the countryside and mountainous areas of Burma. The army finally settled in a remote mountain area. Teng Kao Pao-Chu informed this Tribunal:

<sup>217</sup> Exhibit 140, Affidavit of witness Teng Kao Pao Chu, para 1, submitted by the Taiwanese Prosecution, December 9, 2000.

<sup>218</sup> Exhibit 140, Affidavit of witness Teng Kao Pao Chu, para 2, submitted by the Taiwanese Prosecution, December 9, 2000.

The unit's name was called Tatsu Butai. It was the headquarters of an army unit. The service was three yen for army officers and two yens for soldiers. We splitted the money with the person in charge by 4/6. For several times, I entrusted money to Japanese soldiers to be sent to my family, but there were several times that my family did not receive them. In the comfort center, they distributed 6 to 12 condoms each month. If that was not enough, we had to wash them in the stream and recycle them. The army physician inspect[ed] our health once a week. I did not get pregnant, but if someone did become pregnant, she still had to work until six or seven months [of] pregnan[cy]. After she delivered the baby, she must work again. A comfort woman that can sing is treated better because she did not have to stay in the comfort center all day, and sing to the Japanese soldier[s] on a stage. The comfort centers were built by woods, with one bedroom for each of us like a dormitory. There were also comfort centers for Koreans and Cantonese. We work[ed] from nine a.m. to five p.m., with more customers during the weekends. During the day time, most of the customers were soldiers, and at nights, most of them were officers. All soldiers and officers must pay for a token to be served. We were forbade to provide service when we had our menstruation, for fear that our vagina or uterus will be infected. I did not want to provide services when I had my menstruation, but some soldiers would insist upon it. I would reject it with an excuse of stomach ache or for sanitary reasons. I prefer to keep them company by drinking and singing with them, rather than having intercourse. I missed my sister there. When I felt homesick, I would go to the mountain to sing alone. Day after day, and year after year, I was alone abroad and wondered and wondered what had become of my country. My sister and brother-in-law did not know about my life here. I often wept while I sang, like a bird trapped in a cage without freedom. Why did I have to suffer here?

188. Teng Kao Pao-Chu could not escape due to the constant presence of the guards at the “comfort stations.” She testified that “there [were] so many Japanese soldiers and they were watching us and there wasn’t a situation where we could escape.” She returned to Taiwan in 1947.

(c) *Sexual Enslavement of Korean Girls and Women*

189. As the Japanese army’s demand for systematic sexual services increased, Korea was also seen as a prime source for procuring women for the facilities. Tens of thousands of Korean women and girls were 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. Japanese recruited Korean women disproportionately into the “comfort system.”
190. As indicated above, the Kwantung Army under General UMEZU had sent out requests to the Korean Governor General to supply 20,000 Korean women, but they were only able to obtain some 3,000 women. The staff officer Hara oversaw the establishment of “comfort stations” under his command in Hankou and north-eastern China. Besides supplying Korean “comfort women” on request, the Government-General of Korea also

sought to control the flow of civilians and “comfort women” going into Hankou, based on the ratio of comfort facilities to the population there.<sup>219</sup>

191. By 1943, there were at least 11 sexual slavery facilities in Hankou, one of them being Sansei-ro which contained at least 150 Korean girls and women, including the witness, Ha Sang-Suk.<sup>220</sup> As previously noted, there were comfort facilities containing Korean comfort women established in Guangdong, China much earlier. In April 1939, according to the testimony of Oda Kiyoshi, a soldier dealing with heavy artillery, there were many “comfort stations” in the Guangdong area. He stated:

[I]n one of those comfort stations there were about three old Korean guys, and each one was in charge of about 50 Korean comfort women. So that makes about 100 or 150 comfort women in the whole station... Almost all the girls were Korean Ps [derogatory term for ‘prostitutes’]. Some comfort stations had Taiwan guiangs [young women] or Kuangtung [Guangdong] Ps. The Korean Ps said they’d seen an ad for practical nurses, and when they applied they were brought to a comfort station instead. They were tricked into it. Most of them were just young girls between the ages of 18 and 24.<sup>221</sup>

192. Also in Guangdong, in one of the “comfort women” facilities overseen by the 21<sup>st</sup> Army under General ANDO, Korean survivor-witness Kim Bok-Dong was forced into sexual slavery. Approximately one thousand women and girls were recruited for the “comfort stations” in the Guangdong vicinity.<sup>222</sup> The Consulate-General of the Guangdong region was undoubtedly aware that such facilities existed in Guangdong because he authored a document indicating that he knew of at least 86 people related to military “comfort stations” in Guangdong.<sup>223</sup> Attached to the document, issued by the Consulate General, was a chart indicating the total number of existing “comfort stations” in Guangdong, Haikou, and Hong Kong between April 1941 and June 1942.<sup>224</sup>
193. In Huichun, Manchuria, there were approximately 20 to 30 “comfort” houses; the women and girls inhabiting them were predominantly Korean.<sup>225</sup> The recollections of one soldier, circa 1943, in referring to “comfort women” held in houses around Huichun, reports that “[s]ome of their faces looked quite childlike.” The soldier recalls that the Korean girls “were told that working to comfort soldiers was a fine thing and that they’d be earning money besides.” He remarks that “they were taken far away from their homes... On Sundays, the men were just like animals and the girls didn’t get a moment’s rest. Before they finished with one guy the next one would be knocking on the door. They weren’t even allowed to take a break when they had their periods, but had to keep on

<sup>219</sup> Korean Exhibit, KR16, submitted by the Korean Prosecution, December 8, 2000.

<sup>220</sup> Korean Exhibit, KR12.

<sup>221</sup> Korean Exhibit, KB4, document entitled “Comfort Women and the Fifteen Years War,” authored by Nishino, Rumiko, containing testimony of military personnel showing that in April 1939, there were many comfort stations in the vicinity of Guangdong (Kuangtung), and that a large number of Korean comfort women were serving in them.

<sup>222</sup> Korean Exhibit, KB3.

<sup>223</sup> Korean Exhibit, KB5, entitled “Documents concerning the Consulate-General of Kuangtung [Guangdong] Concerning the Limitation and Regulation of Japanese Citizens Travelling to China at the Time of the China Incident: Summary of Provisional Measures; Record of Statistics Concerning the Provisional Treatment of Japanese Citizens Traveling to China,” authored by the Consulate General of Guangdong (date unknown).

<sup>224</sup> Korean Exhibit, KB5.

<sup>225</sup> Korean Exhibit, KG5.

working...Some finally killed themselves.”<sup>226</sup> Witness Kim Gun-Ja was forced to work in Huichun as a “comfort woman” around the same time.

194. A witness before this Tribunal, Pak Yong-Sim, testified that in 1938, at the age of 17, she was working in a shop selling Western suits when a Japanese police officer in uniform and wearing a long sword spoke to her about a job in a factory. Since she came from a poor family and was earning very little with her current job, she decided to apply for it and the officer took her to Pyongyang, where she was loaded into a vehicle with other women and eventually taken to Nanking.<sup>227</sup> On arrival, the Japanese military forced her to become a “comfort woman.” Recalling the experiences she was forced to endure, Pak Yong-Sim told the Tribunal:

I became a ‘comfort woman’. I was in a three-story building in Nanjing that was at the Kinsui-rou ‘comfort station’. There I was called by the Japanese name ‘Utamaru’. I had to service up to thirty soldiers every day. One day I was really in pain and when I didn’t respond to the demands of one officer, that bastard beat me with his fists, kicked me with his boots, took a long knife and held it up against my throat and...cut me. The blood poured out and soaked my whole body, but that bastard officer went [on] to satisfy his lust. Other ‘comfort women’ who caught diseases and became malnourished were carted out or often dumped into the river to drown. I also saw two Japanese army privates stab a pregnant woman in the belly and kill her. I was there for three years.

195. From China, a Japanese army escort took her to Burma via Shanghai and Singapore. Pak Yong-Sim was interned until the end of the war in two sexual slavery facilities in the Burma-China theatres. As to her experience in a sexual slavery facility, she testified:

I was there for two years and I was called “Wakaharu” there. The ‘comfort station’ was deep in the mountains and nobody lived in the area. The name of the ‘comfort station’ in Japanese was “Itakakuro.” During the day I had to service about ten army privates, and at night I had to serve the officers. The privates brought condoms.

196. Pak Yong-Sim testified: “I had to service between thirty and forty army privates so I was always in real pain.” Soon thereafter she was transferred to Lameng. She testified how she also had to do other work, besides providing sexual services for “tens of Japanese soldiers” daily, such as supplying food for them even during dangerous Allied bombings. Even while pregnant, she was required to continue providing sexual services. Some months later, Chinese troops found Pak Yong-Sim and took her and three other women as prisoners to their military camp where they interrogated and photographed them.<sup>228</sup> While at the camp Pak Yong-Sim started bleeding and had to have an operation and her baby was born dead. She was never thereafter able to have children. She was released from the prisoner of war camp in 1946 and, travelling by boat and train, finally returned to her

<sup>226</sup> Korean Exhibit, KG4, entitled “Military Comfort Station; We and War 2—Records of Wartime Experiences,” authored by Shimamoto, Juzo, a soldier with the 733rd unit, stationed at Huichun for two years beginning in 1943.

<sup>227</sup> Exhibit 23, Video Testimony of Korean Witnesses, Korean Exhibit Appendix 6-1, at 9, submitted by the Korean Prosecution, December 8, 2000; Live Testimony of Pak Yong-Sim, witness for the Korean Prosecution, December 8, 2000.

<sup>228</sup> Korean Appendix 6-1, p. 10; Korean Exhibit KP, pp. 5-6.

hometown after having been away for nine years, at least seven years of which she served as a “comfort woman.”<sup>229</sup>

197. Another witness, Kim Bok-Dong, 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.<sup>230</sup> 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,” which though ostensibly independent from the army, catered only to Japanese soldiers.<sup>231</sup> Of the thirty women at her sexual slavery facility, only one was not Korean. Kim Bok-Dong described the initial stages of her “comfort station” experience:

There was a corridor in the middle of the building with rooms running along each side. There were thirty rooms. Each woman was assigned a room. The rooms were separated only by plywood and it was possible to hear someone breathing in the next room. The rooms were very small and contained only a bed thrown down on some wood assembled on the concrete floor. Each room was marked by a number on top and the comfort woman’s name beneath...Inside the ‘comfort station’, it wasn’t just names that became Japanese; I had to use the whole Japanese language too.

198. The medical officer who examined Kim Bok-Dong on arrival raped her a few days later. She stated:

Frightened, I tried to escape out back and hide but he caught me and slapped me sharply across both cheeks. It was hard enough that my whole face went numb. He told me to do as he ordered, and I couldn’t but hear him. I guessed that if I tried to resist, I would be the only one to suffer, so I resigned myself to doing as he said. But because it was my first time, it was utterly unbearable. I bled between my legs and it hurt as if I had been ripped open. My vagina swelled, and burned so much I could not urinate. The next day I and two other women talked about killing ourselves.

199. Continuing to describe her experiences at the sexual slavery facility, Kim Bok-Dong 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.

200. From Guangdong, the Japanese transported Kim Bok-Dong to Hong Kong where she was forced to serve as a “comfort woman” under similar conditions. She testified that after

<sup>229</sup> Exhibit 23, Korean Appendix 6-1, p. 10.

<sup>230</sup> Exhibit 22, Appendix 6-1, pp. 2-3, submitted by the Korean Prosecution, December 8, 2000; Korean Exhibit KB1.

<sup>231</sup> Exhibit 22, Appendix 6-1, pp. 3-5; Korean Exhibit KB5.

three months, they took her under guard to Singapore to the Japanese army division stationed there, where she and other victims were again forced to provide sexual services to the Japanese military. She remained a “comfort woman” until Japan’s defeat in 1945.<sup>232</sup>

201. Before this Tribunal, Kim Gun-Ja explained how in March 1942, at age 15, her “adopted father” sent her off with a Korean man in a uniform, though he was not a soldier. The Korean transported her along with seven other girls, first by freight car then by military truck, to Huichun, Manchuria.<sup>233</sup> Kim Gun-Ja explained that “the man who brought me to the comfort station ran it with his wife.” Upon arrival the proprietor put her into a room on the first floor and within a few days he forced her to provide sexual services to Japanese soldiers. The proprietor, his wife, and a male employee would beat the women and monitor them.<sup>234</sup> She recalled her suffering in the “comfort station,” stating:

Soldiers started coming from about two or three days after my arrival. At first I refused, and they gave me a hard hit on my right ear that ruptured my eardrum. They just let it bleed, and I still can’t hear very well. The soldiers came from about 2 or 3 pm on Saturdays, and there was an especially large number of them between 9am and 7pm on Sundays. There weren’t many who came alone, and they came on a truck or on foot, led by officers. The soldiers passed through the office and waited in lines in front of the rooms. The halls were swarming with more than a hundred of them. I couldn’t walk, and I wasn’t allowed to rest during menstruation. On weekdays there were only officers who came, slept, and then left. On Saturdays and Sundays officers came only at night. When there were a lot of them, I had to service up to forty at one time, and I couldn’t wash at all, causing additional pain. The soldiers brought condoms which tended to break so some men didn’t use them. Every Friday night we were examined for sexually transmitted diseases. We all got on a truck and went to the military officer who examined us. We were the only women in the barracks hospital. I contracted syphilis and was given the 606 injection. I also got pregnant, but miscarried. I was called “Kumiko” or just my room number “nine.”

202. She testified further that she did not entertain the idea of escaping because of the brutal punishment meted out to escapees who were caught. A year and a half later, Kim Gun-Ja was transferred to Kokashi some sixteen kilometres from Huichun, Manchuria. She was finally released when Korea was liberated in 1944.
203. Witness Ha Sang-Suk was 16 in 1944 when a Korean man took her and an acquaintance away to an inn in Kyongsong province where the couple running the inn gave her the name Kimiko. They sent her and forty other women and girls on a train carrying soldiers to Hankou via Pyongyang, Tenjin, Nanking, and Wuhan. There, they were taken to a house operated by a couple from Pyongyang. Ha Sang-Suk recalled they “were examined by a doctor” and that they were “given medicine and injections to prevent pregnancy.” She also recounted how the women and girls “were presented to the military department responsible for “comfort stations,” and with the permission slip stating that women had to

<sup>232</sup> Exhibit 22, Korean Appendix 6-1, pp. 6-7.

<sup>233</sup> Exhibit 22, Korean Appendix 6-1, p. 1; Korean Exhibit KG1.

<sup>234</sup> Exhibit 22, Korean Appendix 6-1, p. 1.



be older than eighteen [when] presented. My age was raised to eighteen.”<sup>235</sup> Thus any age minimum was merely a ruse. She continued stating:

The Japanese doctor told me that I was a virgin all right and somebody who seemed old enough to be my father slept with me. He raped me and he told me that from this night on I will be serving Japanese soldiers. I would have to take dozens of Japanese soldiers every night.

In further describing her experience at the facility, Ha Sang-Suk testified:

The ‘comfort station’ had two stories, and was the third house in... [the] village. There were about twenty rooms, all with tatami floors. First, three Japanese soldiers came in, and after that, it was only soldiers. Usually, ten to fifteen soldiers came each day. If the soldiers gave money to me, I gave it to the owners in exchange for condoms and tissue. The amount was about one or two Chinese yuan, and the managers kept record of it in an account book. On Sundays the soldiers waited in lines outside. Each soldier was allotted about one hour. When I refused to allow a soldier to go twice, I was sometimes beaten. Some soldiers showed up drunk and threatened to kill me. I fought with those who refused to wear a condom. If a soldier was dissatisfied with any of the women, he complained directly to the proprietor who then beat and kicked the woman.... There was a bathhouse. After servicing a soldier, I went to the bathhouse and washed with medicated water. Every Monday I went to a hospital in Jokgyong village and was checked for sexually transmitted diseases.... The owner hated it if anyone had contracted a disease so they [the women] covered cotton wool with dust and swabbed themselves. This way, even if there was an infection, it was possible to pass the examination. Women who contracted syphilis were hospitalised and treated with the 606 injection. They usually recovered within fifteen days.

204. Ha Sang-Suk and the other women could neither leave the brothel nor rest. The proprietors of the “comfort” facility bought them clothes and make-up but gave them no money. She tried to borrow money from the Korean man who brought her to the “comfort station” to get the train fare home but he told her that she would have to work for three years to repay him.<sup>236</sup> One day, Ha Sang-Suk heard that Japan had lost the war, so she left the “comfort” house. Later, she decided not to return to Korea and remained in China where she met and married a Chinese native with three children.
205. Song Shin-Do, another surviving victim of the military sexual slavery system, was approximately 16 years old in 1938 when a Korean woman proposed that she go to work assisting those on the battlefield. Living alone and unmarried, she went with the Korean woman to Pyongyang where she saw a lot of other girls in their late teens gathered. From Pyongyang, a Korean man took the still unsuspecting Song Shin-Do to Wuchang and deposited her at a large military building which turned out to be a “comfort station” called World View. Due to serious fighting nearby dead bodies were scattered across the floor and Song Shin-Do and other girls were ordered to clear away the corpses and wash the

<sup>235</sup> Exhibit 22, pp. 7-8.

<sup>236</sup> Exhibit 22, Korean Appendix 6-1, p. 8.

blood stains off the walls. Afterwards, they were all examined for sexually transmitted diseases and it was then that Song Shin-Do realised what her work would entail.

206. Kanedo became her professional name, and Song Shin-Do had to provide sexual services to many Japanese soldiers.<sup>237</sup> She described her experience, stating:

The proprietor of “World View” was a short Korean man... There were a dozen or so ‘comfort women’ at “World View,” and we were all Korean. We were not allowed to speak Korean, and even speaking familiarly among ourselves was prohibited. Of all the women, I had the hardest time at “World View.” I was so young I had not even begun to menstruate yet. The first time I was forced to service a soldier, I didn’t know what I was supposed to do. I couldn’t stop crying, and I ran out. The first man to come in to my room was an officer named Takahashi, and when he saw me run away crying, he didn’t do anything and left. That officer reported it, and someone from the office exploded with anger at me. In the ‘comfort station’ office, I got very frightened. 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, and 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... I was forced to service dozens of soldiers every day. Rest was not permitted during menstruation. Especially on Sundays, there were a lot of soldiers, and some of them demanded dominant and barbaric sexual acts... If the comfort women were too exhausted and tried to refuse the soldier’s demands, they were threatened with knives, beaten, and subjected to all sorts of violence.

207. 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. The “comfort” facility expelled Song Shin-Do during her second pregnancy, whereupon she was taken to other sexual slavery facilities. She eventually was forced to provide sexual services to soldiers on the front lines where she was in increasing danger as the war intensified. As a “comfort woman” serving on the battlefield, Song Shin-Do witnessed many barbaric acts being committed against Chinese prisoners of war. She and other “comfort women” had to do sentry duty as well. When the war ended in 1945, a Japanese soldier took her to Japan where he abandoned her. Having no means of returning to Korea then, she stayed in Japan and eventually found work in a Korean-Japanese owned restaurant and lived together with the proprietor until he died. Thereafter she remained in Japan.
208. Kim Yong-Suk, another survivor witness, testified that at the age of 12, she was working for a rich family until a Japanese policeman told her that she would make a lot of money if she went away with him. She accepted his proposition, and they travelled together for many days before arriving at a Japanese hospital, which also served as a “comfort station.” Kim Yong-Suk recalled that “there were many different rooms which belonged

<sup>237</sup> Exhibit 22, pp. 10-11; Korean Exhibit KR1.

to the sexual slavery facility, many rooms, side by side and they were [surrounded] by very high walls and barbed wire all over the place and had these guards guarding everywhere.” She was held in the last room of the “comfort station” and was given the name Nukada. Shortly after arrival, a Japanese soldier named Nakamura came into the room and said “Let’s have some fun.” He then stripped her naked and took out his penis. Kim Yong-Suk testified to her first day in the station, saying:

I was only 12. I didn’t know what that meant...I was frightened, but he was literally forcing me on the ground and he cut me open with his sword. Then I was bleeding and then he completely took off his pants and he raped me. He raped me to the point where I was bleeding and I was crying...[T]here was another soldier, Kanemura, he came in and called me names for being a Korean woman...He stripped me naked and he also cut me with his sword and he hurt my breast area. If you see my body, I am full of scars. He hurt me all over my body.

Kim Yong-Suk remained a “comfort woman” until the war ended.

209. Moon Pil-Gi testified before this Tribunal that she was 15 years old in 1942 when taken away by a neighbour while accompanied by the police. They put her on a truck that took her to Manchuria. There, Moon Pil-Gi was placed in a “comfort” facility and forced to provide sexual services to Japanese troops. She described her abuse in the following manner:

They tried to rape me. They were forcing me. They were treating me as a slave and they kicked me [and] hit me when I was not very good to them. And also they...burned my skin...[T]here was a red, burning, scorching, iron bar, and you know I have a scar, still underneath my arm.

210. “Mostly soldiers” raped Moon Pil-Gi. The military stations “were surrounded by the barbed wires” and under guard, and she feared that she would be killed if she attempted to escape. She was forced to remain a comfort woman until the end of the war.
211. Ahn Bok-Soon, another survivor of the “comfort system,” testified before this Tribunal that she remained a “comfort woman” at a station in Singapore until the end of the war. One day, when she discovered that there were no more Japanese soldiers around, she went out onto the street. Ahn Bok-Soon hid in the mountains surviving on vegetation for over a year before managing to make her way back to Korea.

*(d) Sexual Enslavement in the Philippines and of Filipina Girls and Women*

212. With the institution of its military regime in the Philippines in 1942, the Japanese army established sexual slavery facilities there. As with other countries, the Japanese military utilised various methods, particularly force and deception, to conscript Filipina girls and women into the system of sexual slavery.
213. These “comfort” facilities were run by Japanese civilians who had received the necessary permission of the commanding officer.<sup>238</sup> The “comfort station” managers were required

<sup>238</sup> Exhibit 59, submitted by the Filipino Prosecution, December 9, 2000, document entitled “Amenities in the Japanese Armed Forces,” a research report published by the Allied Translator and Interpreter Section, Supreme Commander for the Allied Powers, November 15, 1945.

to follow rules and regulations issued by the Japanese military. Some of the regulations required separate “comfort stations” for the air and naval forces, and stipulated which stations were to be placed under the supervision of commanding officers and adjuncts to the air and naval depots. Other general regulations purported to forbid using “comfort women” who were still minors, mandated medical check-ups of the women for venereal diseases once a week, and required the use of condoms at all times. The “comfort women” were not to have sexual intercourse during their menstruation, and were only to live in houses that always had clean bedding available.<sup>239</sup> The detailed regulations governing the first “comfort station” in the Philippines, set up in 1942, also addressed certain conditions of detention in the stations. For example, the regulations allowed the “comfort women” to take walks at a designated time (between the hours of 8am and 10am) and for a specific distance. The “comfort stations” were only available to those “military men and civilian employees of the Army wearing military uniform[s]” who paid in advance.<sup>240</sup> Subsequently, sexual slavery facilities were set up in Cagyan City,<sup>241</sup> Masbate Island in Laguna,<sup>242</sup> Santa Cruz,<sup>243</sup> and Panay.<sup>244</sup> The Tribunal notes that the purported regulations were largely unenforced and that the “comfort women” had little effective power to ensure that soldiers used condoms or that minors were not selected for abuse, and to refuse services during menstruation.

214. Before this Tribunal, Tomasa Dioso Salinog testified that in April 1942, at the age of 13, Japanese soldiers forcibly took her away from her home after beheading her protesting father in front of her. Knowing she was a child, they nonetheless took her to a large house nearby, confined her in a room, and beat and raped her, even though she had not even had her first menstrual period yet. She described her initial ordeal in the following way:

The soldier placed his hands on my thighs and other parts of my body. Then he grabbed my body. . . and we fell. He fell on top of me. I wanted to get up. I struggled against him, wanting to get up but I could not. I was pinned down. I struggled and he got mad. Then he hit my head with a hard object. . . then they left the room. When they came back they brought some water and washed my body, and then that evening they came back and abused me. They took turns abusing me.

In her affidavit, Tomasa Dioso Salinog averred:

When I woke up the next morning, the soldiers were no longer in the room. For three days they left me alone but then the Japanese soldiers started raping me again. I fainted so many times that I do not remember how many soldiers raped me. I only remember that two to five soldiers a day came into the room to rape me. Often I was continuously raped from afternoon till late at night. . . . In the big house I was served only two meals. . . . There were even times when I was only served breakfast. I

<sup>239</sup> Exhibit 59, pp. 12-13.

<sup>240</sup> Exhibit 68, submitted by the Filipino Prosecution, December 9, 2000, a memorandum entitled “Rules and Regulations of Comfort Station Asia Kaikan & First Comfort Station,” originated by the Iloilo Branch, Visaya Section, Philippine Military Government, Iloilo Military Police Squad, November 23, 1942.

<sup>241</sup> Exhibits 66 & 67, submitted by the Filipino Prosecution, December 9, 2000.

<sup>242</sup> Exhibit 68, submitted by the Filipino Prosecution, December 9, 2000.

<sup>243</sup> Exhibit 70, submitted by the Filipino Prosecution, December 9, 2000.

<sup>244</sup> Exhibit 73-A, submitted by the Filipino Prosecution, December 9, 2000.

slept during the day-time as I had nothing to do being locked up inside the room. I hated for night to come as I know that soldiers will enter the room to rape me. I wanted to die. The soldiers' body odour was very bad. In particular, those who came back from the mountain smelled extremely bad since they came straight into the room without washing. . . . Some of the soldiers visited and raped [me] repeatedly. Some were waiting on vacant beds for their turn while I was being raped by another. Those soldiers from the mountain patrols had been drinking tuba [a local coconut wine] and were brutal. . . . After about a month, I was allowed to go out of the room and walk around the house but never outside the building. . . . While being held captive in the big house, I had medical check-ups but not for venereal disease. No one used a condom.

215. Tomasa Dioso Salinog remained in that "comfort station" for a year, raped daily by three or four men. She managed to escape when, having had too much to drink, the soldiers forgot to take the key. She found refuge with an old couple, but they were forced to give her up when a Japanese soldier appeared demanding that Tomasa Dioso Salinog be turned over to him. She stayed with this soldier, Okumura, until the end of the war preferring to remain in his lodging and be abused by a few, than to be returned to the big house to be sexually abused by numerous Japanese soldiers. She was raped by Okumura and his friends whenever they came home. When the Americans landed in the Philippines, she was able to leave and make her way home. She never married.
216. In August 1944, at age 15, Maxima Regala de la Cruz, another survivor of the "comfort" system, 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 first rape 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. After that day, my mother and I were kept imprisoned in the house. During the day, while the soldiers raided the villages, my mother was brought to my room where we were locked in. A soldier guarded us and was present even when we had to go to the bathroom. At night, we were placed in separate rooms where the soldiers who came back from their military operations would sexually abuse us.

Both women remained in the "comfort station" for three months. Maxima Regala de la Cruz was given additional clothing since every time she returned to her room her clothes were soaked with blood. Although looking for an escape avenue, there was always a guard watching. One day in October 1944, when the soldiers did not lock their door,

Maxima 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.

(e) *Sexual Enslavement in Malaysia and of Malaysian Girls and Women*

217. Following the Japanese invasion of Malaysia (Malaya) in 1941, the Japanese occupying administration established and managed “comfort” facilities in the Malay Peninsula and Singapore.<sup>245</sup> The 25<sup>th</sup> Army, in charge of operations in Malaysia, which was under the command of General YAMASHITA, sent soldiers to Bangkok, Thailand to procure “comfort women,” and they returned with three Thai women who were not infected with sexually transmitted diseases. Shortly thereafter, the military began setting up facilities throughout Malaysia, whereupon they placed Malaysian girls and women into those facilities along with the other women.<sup>246</sup>
218. YAMASHITA was the Commander of the 25<sup>th</sup> Army in Malaya from November 1941 to July 1942. The “comfort stations” in Malaysia, 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. The regulations explicitly stipulated that condoms were to be rationed and used in proportion to the number of “comfort women” in each city, and that the “comfort stations” were exclusively for military use.<sup>247</sup> “Comfort” facilities were established in many Malaysian regions including, Kuala Pilah, Port Dickson, Penang,<sup>248</sup> Kuala Lumpur, and Semarang.<sup>249</sup>
219. As in other conquered territories, the Japanese military utilised a variety of methods, including deceptive advertising and force, in obtaining women for the stations, and they imposed brutal conditions of detention upon the conscripts.
220. Some of the women forced into sexual slavery in Malaysia had been prostitutes. The plight of former prostitutes recruited into the “comfort system” and turned into sex slaves is illustrated by the following example. According to the recollections of Fusayama Takao, an officer in the Signal Corps of the Imperial Guard Division (later a member of the Japan Academy), in February 1942 the Japanese military opened a “comfort station” in Singapore.<sup>250</sup> An ad in a Chinese-language newspaper promised good wages and requested “hostesses, aged 17-28,” to apply. At first, they sought out prostitutes, described as those in the “shameful calling.”<sup>251</sup> According to Fusayama Takao, the rear staff of the 25<sup>th</sup> Army Headquarters conducted the recruiting and many women who had

<sup>245</sup> Korean Exhibit KB6, entitled “Japanese Military Comfort Stations on the Malay Peninsula,” based on documents discovered by Professor Hayashi, Hirofumi, 1993; Exhibit 151, entitled “The Regulations on the Control of Recreation Facilities and Hotel Business”: The 28th Notification of Malayan Military Administration,” authored by the Malayan Military Administration, November 11, 1943, submitted by the Malaysian Prosecution, December 10, 2000; Exhibit 152, entitled “The Military Administrative Regulations on the Observance of Recreation Facilities and Hotel Business Rules,” authored by the Malayan Military Administration, November 11, 1943, submitted by the Malaysian Prosecution, December 10, 2000.

<sup>246</sup> Yoshimi, *Comfort Women*, p. 123.

<sup>247</sup> Exhibit 153, submitted by the Malaysian Prosecution, December 10, 2000.

<sup>248</sup> Exhibit 145, submitted by the Malaysian Prosecution, December 10, 2000; Exhibit 150, submitted by the Malaysian Prosecution, December 10, 2000.

<sup>249</sup> Exhibit 146-c, submitted by the Malaysian Prosecution, December 10, 2000.

<sup>250</sup> Yoshimi, *Comfort Women*, p. 124, referring to a document authored by Fusayama, Takao, “Nankai no akebono” (Tokyo: Soubunsha, 1983), p. 150.

<sup>251</sup> Yoshimi, *Comfort Women*, p. 124, referring to a document authored by Professor Hayashi, Hirofumi, “Shingapouru [Singapore] no nihongun ianjo,” *Senso Sekinin Kenkyou* 4 (June 1996), p. 34.

been the mistresses of the English soldiers as well as impoverished prostitutes applied. The women agreed to the terms, believing that they would have to service only one soldier per day. But once they found out the number was unlimited, they protested that they were required to serve the many soldiers lined up outside the “comfort station.” After the women had been required to serve up to five soldiers, the soldier in charge sought to stop further visitors, but this caused rioting among the soldiers. As a result, he “tied the women’s arms and legs to their beds,” forcing them to continue.<sup>252</sup>

221. Rosalind Saw testified through videotape that one night in 1943 when she was approximately 24 years old, Japanese soldiers took her away from her home and children. The soldiers put her into a lorry and took her to a “comfort” facility in Penang, Malaysia run by an elderly Japanese woman and containing other women of Chinese and Malaysian descent. She was given the Japanese name of Hanako. Rosalind Saw recounted her ordeals in Penang in the following manner:

Everybody for one room. . . . We cannot make friends. You didn’t run away. Ha! Then the Japanese cut your head off. Not only army soldiers but also some other soldiers. Everybody the same. Morning 20 person[s], afternoon 20, night 20. One day, 60 men. Not all the time could you sleep on the bed, sitting down again. No holiday for us. . . . For three years, many soldiers would not use condoms. At night, all the officers very wicked...Pulled my hair. . . . After they kick you. They drag you around. . . . [H]e threatened me, to cut my throat. I said “no, please don’t cut.”

In addition to the continuous rapes, Rosalind Saw had to submit to invasive medical examinations on a weekly basis. As a result of the rapes she became pregnant and after giving birth, since abortion was not allowed there, she remained nearly a month in a hospital. Rosalind Saw returned home to raise her children after the war ended.

222. One witness, Ms. X, testified using a pseudonym. In 1942, two trucks filled with Japanese soldiers stopped at Ms. X’s house. Three Japanese soldiers gang raped Ms. X, before they carried her to one of the trucks and forced her inside. The soldiers took her to a bungalow in Kuala Lumpur where they gang raped her every night, sometimes 5 or 6 at a time. She was kept in the bungalow for one month before being moved to a “comfort station.” Ms. X recalled the experience:

At the comfort station, the life I led was inhumane. Everyday, I was raped by 10-20 Japanese soldiers. I suffered often from stomach cramps. . . and bleeding of the vagina. Sometimes due to the pain, I could not co-operate in the sexual acts and was beaten and kicked by the Japanese soldiers. Our every move was monitored and we were not allowed to go out of the house. Nor could we communicate with each other.

223. Once the proprietor allowed her to leave the “comfort station” with an escort to search for her brother among the dead, but she had to return. Ms. X was kept as a “comfort woman” until just before the Japanese surrendered. Although she returned to her village, she had to leave it because the villagers openly despised her and treated her as an outcast for being a “comfort woman.” She met her husband, who married her despite knowing that

<sup>252</sup> Yoshimi, *Comfort Women*, p. 124, referring to Fusayama, Takao, “Nankai no akebono” (Tokyo: Soubunsha, 1983), p. 151.

she was not a virgin, in another town. She never told him why she was not a virgin. Ms. X was unable to bear children so she and her husband adopted two children. Eventually however her husband left her because she hated having sex and refused to make love even to her husband.

224. The Tribunal notes that for women held in private homes or held exclusively for officers or held under circumstances or conditions which were not formally within the “comfort” station system, responsibility for such crimes can be attributed to the Japanese government which created an atmosphere that allowed such rape and enslavement of women to be considered normal and acceptable wartime activities.

(f) *Sexual Enslavement in Indonesia and of Indonesian Girls and Women*

225. The Japanese army also erected “comfort stations” in Indonesia in the wake of their invasion in 1942. It forcibly or coercibly interned many girls and women of native Indonesian and Dutch descent in the “comfort” facilities for the purpose of using and abusing them sexually.
226. A military doctor, Kinbara, Setsuzo, the chief of the medical bureau of the War Ministry, aided in establishing the “comfort system” in Indonesia by advocating in 1941 that “comfort stations” be set up there. His recommendations were based on observing the sense of virtue the Indonesians had due to their Islamic faith and his desire to cultivate the trust of the Indonesians. He feared that trust would be destroyed if Japanese soldiers raped local women.<sup>253</sup> Dr. Kinbara also recommended that the village headmen assist in building the “comfort stations,” in order to cultivate a sense of trust between the Japanese and the locals.<sup>254</sup>
227. To this end, in 1942 the Southern Army General Command requested by telegram that 50 native Indonesian comfort women be sent to Borneo.<sup>255</sup> Upon this request, General ANDO, in his capacity as Commander of the Taiwan Army, sent a confidential telegram to the War Minister requesting travel permits for “comfort station” operators and proprietors.<sup>256</sup>
228. According to the Netherlands Forces Intelligence Service’s “Report on Enforced Prostitution in Western Borneo, N.E.I., during the Japanese Naval Occupation,” during 1943, women in Borneo who had had voluntary relations with Japanese persons were forced by the Tokei Tai, the Special Naval Police, into sexual slavery facilities surrounded by barbed wire as a result of the military ban on such voluntary sexual relations. The Tokei Tai also accused other women working for Japanese firms in Indonesia of maintaining relations with Japanese men.<sup>257</sup> The Report on Enforced Prostitution further stated that the Tokei Tai undressed and forced these women to

<sup>253</sup> Exhibit 166, submitted by the Indonesian Prosecution, December 10, 2000, entry in the Diary of Kinbara, Setsuzo, vol. 1, No 3, (July 10-28, 1941), Chief of Medical Section, Medical Bureau (Lieutenant-Colonel, Medical Officer, and Colonel, Medical Officer from August 1942).

<sup>254</sup> Exhibit 166, submitted by the Indonesian Prosecution, December 10, 2000, entry in Diary of Kinbara, Setsuzo, *Ibid.*

<sup>255</sup> Exhibit 158, submitted by the Indonesian Prosecution, December 10, 2000, document entitled “Tai-den No. 602 [Taiwan Army Telegram No. 602]: Concerning Passage for Personnel to be Dispatched to the South,” March 12, 1942.

<sup>256</sup> Exhibit 158, submitted by the Indonesian Prosecution, December 10, 2000. The evidence shows that it was a confidential telegram sent by General ANDO at the request of the Southern Army to the War Ministry.

<sup>257</sup> Exhibit 160, submitted by the Indonesian Prosecution, December 10, 2000, document entitled “Report on Enforced Prostitution in Western Borneo, N.E.I., during Japanese Naval Occupation,” authored by the Netherlands Forces Intelligence Service, Batavia July 5, 1946.



undergo medical examinations after which those who were found to be virgins were compelled to be “comfort women.” Other women were arrested on the streets and deposited into “comfort stations.” These sexual slavery facilities were run by the garrison for navy personnel or by civilians.<sup>258</sup>

229. In Balikpapan, Indonesia, Lieutenant Nakasone, Yasuhiro, later to be a Prime Minister of Japan, stated that he went to great lengths to build “comfort” facilities in order to prevent the Japanese soldiers and naval civilian employees from continuing to assault the local women.<sup>259</sup> According to a confidential telegram sent to the chief of staff of the Southwest Area Fleet in Balikpapan during 1942, the Southwest Area Fleet was operating sexual slavery facilities and was involved with the proprietors of the “comfort stations” concerning such things as the placement of facilities, provision of goods, the transportation of the women, and the management of the stations.<sup>260</sup>
230. On the island of Anbon Pulau, some Japanese “comfort women” were sent home and “comfort stations” with local women were closed due to worsening war conditions. An officer of the Naval Special Police Corps recalled that because military personnel continued to rape local women, “comfort stations” were again set up in an effort to control the rapes. The civilian police forcibly rounded up local women of Indonesian and Eurasian descent. And, according to the statement of the civil administrator made to the naval police officer, the civilian police forced them on the ships against the screaming protests of their families. Although the officer described some of the women as former “comfort women,” prostitutes, and volunteers, he admitted that “a certain degree of coercion was inevitable.”<sup>261</sup> According to an account by Sakabe Yasumasa, the paymaster attached to the 25<sup>th</sup> Special Naval Base Headquarters, after the Japanese “comfort women” were sent home, the headquarters staff planned to open four new stations with about 100 local women. They selected the most attractive women who were not infected with venereal diseases to work as “comfort women” in these stations. The officer recalled feeling “depressed listening to the voices of the young Indonesian women crying out over and over at the club.”<sup>262</sup>
231. According to a report to the Chief of the Second Repatriation Squad in Indonesia, in the southern part of Indonesia, in the Celebes region, twenty-seven “comfort stations” were built containing approximately 281 girls and women who were mainly of Indonesian descent. Of those stations, the Japanese navy commissioned twenty-three sexual slavery facilities containing about 223 girls and women. Though run by civilians, the Navy bore all the expenses of food and clothing for the women. The other three stations were operated directly by the navy under the supervision of the Chief of the State Affairs

<sup>258</sup> Exhibit 160, submitted by the Indonesian Prosecution, December 10, 2000.

<sup>259</sup> Exhibit 159, submitted by the Indonesian Prosecution, December 10, 2000, document entitled “Niju-san Sai de Sanzen nin no Soushikikan [23 years old Commander of 3000 men],” authored by Nakasone, Yasuhiro (Lieutenant Junior Grade of Accounting of the Navy, later to become a Lieutenant, and Prime Minister after the war), contained in book entitled “Owarinaki Kaigun [The Endless Navy],” Publication Department, Development Center, Nippon Cultural Broadcasting, Inc., pp. 95, 98.

<sup>260</sup> Exhibit 162, submitted by the Indonesian Prosecution, December 10, 2000, document entitled “Heibi-4-Kimitsu No. 137 [Secret Telegram of the 4th Section, Naval Preparation Bureau No. 137],” authored by Rear Admiral Oka, Takazumi (Vice Admiral from November 1942) & Chief Hoshina, Zenshiro (Vice Admiral from November 1943).

<sup>261</sup> Yoshimi, *Comfort Women*, p. 127, fn 99, referring to a document by Nogi, Harumichi, “Kaigun tokubetsu keisatsutai,” (Tokyo: Taihei shuppansha, 1975), p. 114.

<sup>262</sup> Yoshimi, *Comfort Women*, p. 128, fn 101, 102, referring to a document edited by Soumei, and entitled “Kaigun keiri gakkou gakusei dai 10 ki bunshou kankou iinkai” (Tokyo: Kaigun keiri gakkou gakusei dai 10 ki bunshou kankou iinkai, 1983), p. 312.

Department who was acting with the permission of the Naval Administration's Director-General.<sup>263</sup>

232. Although many Indonesian women were forced into sexual slavery locally, some were sent to other islands of Indonesia. Some Indonesian women and girls were also sent abroad to Burma and the Philippines.<sup>264</sup>
233. In 1942 when she was about 13 years old, Ms. Mardiyem was forced into being a "comfort woman." Explaining her ordeal to the Tribunal, Ms. Mardiyem testified that she was required to work at least 10 hours a day and sometimes throughout the night:

If I tried to refuse, well, you know yourself that I would face torture or abuse, so there wasn't anything that I could do. Everything kind of worked by the clock, so from 12 o'clock noon until 5 o'clock I would have to do work. . . . [T]here would be a break, but the entire evening, from 7 o'clock until midnight, again we'd have to work. So you can count yourself how many hours that this would go on. Sometimes from 12 o'clock night until morning, there would be someone who would spend the entire night.

234. At the age of 14, Ms. Mardiyem was pregnant. Five months into her pregnancy, the Japanese pushed on her abdomen until the foetus came out. Ms. Mardiyem did not receive money for her forced sexual services. She was told, however, that if the tickets the Japanese soldiers bought were kept, they could later be exchanged for money when she was no longer a "comfort woman." She proceeded to fill baskets with these tickets but was never able to exchange them for money.<sup>265</sup>
235. Another witness, Ms. Suhanah, reported that in 1942, when she was sixteen years old, six Japanese soldiers approached her when she was in her backyard and offered her a job or schooling. She refused their offer, and consequently was pulled by her hair and forced into their jeep, which took her to a "comfort" house two kilometres away. Many other women were already present in the "comfort station." 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 several soldiers per day, as well as the examining doctor, and the sexual violence against her was regularly accompanied by additional brutal and degrading treatment. She contracted a venereal disease as a result of the rapes.<sup>266</sup>

*(g) Sexual Enslavement in Dutch Territories and of Dutch Girls and Women*

236. 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. In 1944, the soldiers registered women between the ages of

<sup>263</sup> Exhibit 165, submitted by the Indonesian Prosecution, December 10, 2000, document entitled "Report on the Repatriation of the Second Repatriation Squad," authored by the Officer for Naval Administration, Head of the Second Repatriation Squad of the Naval Administration of Celebes, June 20, 1946, containing information about the situation of repatriates and general business matter, including an investigation of persons responsible for comfort stations in the whole area of Southern Celebes (Sulawesi).

<sup>264</sup> Yoshimi, *Comfort Women*, pp. 127-128.

<sup>265</sup> Indonesian Indictment, paras. 22-24.

<sup>266</sup> Indonesian Indictment, para. 19.

seventeen and twenty-eight.<sup>267</sup> Subsequently, Japanese military officials (who were apparently of high rank because they were saluted as they approached) appeared in military vehicles and ordered all the women between the ages of seventeen and eighteen to line up in the compound. The officials selected around a dozen women to accompany them, and these women were forced into sexual slavery to the Japanese military.

237. The witness Jan Ruff-O'Herne was one of the women selected. 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. Jan Ruff-O'Herne even mentioned to them that this was against the Geneva Conventions governing war conduct but to no avail. Jan Ruff-O'Herne testified that she was brutally raped on a daily basis by a series of Japanese officers. She was also raped by the examining medical doctor. Rape was often accompanied by threats and savage beatings. 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.

238. Hoping no officer would want her if she was ugly, Jan Ruff-O'Herne shaved her head: "I cut off all my hair. . . real close to my scalp. . . . I thought nobody would want me, but it only had the opposite effect. I became a curiosity object, and everybody wanted to have the girl who cut off her hair."
239. The mothers of the Dutch women taken from the camp complained to authorities and after three months, the soldiers told the "comfort women" to pack their bags and go back to the POW camps, where they were again detained until being liberated in 1945.

*(h) Sexual Enslavement in East Timor and of East Timorese Girls and Women*

240. Following the invasion of East Timor in 1942, the Japanese military forcibly and deceptively interned women of Timorese and Chinese descent in sexual slavery facilities and homes where they were repeatedly sexually assaulted. According to documentary evidence, the 48<sup>th</sup> Regiment received permission to establish a "comfort station," whereafter it ordered the nearby village chief to round up women and girls for the station. Many young girls, including mere children, were selected. Those who passed the medical examination were forced into sexual slavery.<sup>268</sup>
241. According to the recollections of First Lieutenant Iwamura, the military asked him to procure women from Indonesia and China for the "comfort stations." After village

<sup>267</sup> Exhibit 155, submitted by the Dutch Prosecution, December 10, 2000.

<sup>268</sup> Exhibit 168, submitted by the East Timorese Prosecution, December 10, 2000, affidavit of document entitled "Sousaku daiyonjuuhachi rentai ase to shouen to gouon no kiroku [Record of the Sweat, Powder, Smoke, and Loud Report[s] of the 48th Regiment]," authored by the Association of the 48th Regiment Comrades in Arms, published February, 1982.

massacres, soldiers also took young local girls of the villages to military bases or to the local Japanese headquarters to be raped and otherwise sexually abused. Other girls were sent to various parts of Indonesia and never seen or heard from again.<sup>269</sup>

242. Some “comfort women” came from Kisar Island to staff “comfort” facilities in other parts of East Timor when local women failed to qualify medically.<sup>270</sup> These women had been told that they would be working in an eating place in Abis, in the central highlands of East Timor. Instead, they were used as “comfort women.” At the end of the war, they begged the retreating Japanese soldiers to take them to Java, or Japan or anywhere but to their own island, for they were ashamed of their bodies and could not go home.<sup>271</sup> “Comfort” facilities were also set up in Bobonaro,<sup>272</sup> Marobo, Baguia,<sup>273</sup> Dili, Baucau and Lautem. Some of the 70 girls and women (who were around age 20) in the process of being sent to Lautem never made it there due to an air attack.<sup>274</sup>
243. 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. She did not know her age at the time of her capture, but recalled that she had not yet begun her menstruation and that her breasts were just beginning 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.

<sup>269</sup> Exhibit 170, submitted by the East Timorese Prosecution, December 10, 2000, affidavit of document entitled “Higashi Timor to sengo hoshou—roufuufu no shougen [East Timor and Postwar Compensation—an Elderly Couple’s Testimony],” authored by Tanaka Mariko, published October 1995.

<sup>270</sup> Exhibit 173, submitted by the East Timorese Prosecution, December 10, 2000, affidavit of document entitled “Chimor, shirarezaru gyakusatsu no shima [Timor, unknown island of massacres],” authored by Tanaka, Atsuo, based on an interview with First Lieutenant Iwamura, Shouhachi officer of the 2nd Taiwan Regiment, published January 15, 1988.

<sup>271</sup> Exhibit 172, submitted by the East Timorese Prosecution, December 10, 2000, affidavit of document entitled “Asahi Shimbun, Letter to the Editor,” authored by Ageta Akio, published August 7, 1991—document indicates that a comfort station was opened in Abis, in the central highlands of the eastern sector of Portuguese Timor.

<sup>272</sup> Exhibit 171, submitted by the East Timorese Prosecution, December 10, 2000, affidavit of document entitled “Taiwan hohei daiichi rentaishi, gunki hatameku tokoro [History of the 1st Formosan Infantry Regiment—Where the Flag Fluttered],” authored by Zenkoku Taiwan hohei daiichi rentai rengoukai hen [1st Formosan Infantry Regiment National Federation, eds], published April 1, 1988—document clarifying the name of the unit stationed in the Bobonaro district of the western part of Portuguese Timor where the local residents were forced through the local ‘Raja’ (king) to labour for the Japanese troops.

<sup>273</sup> Exhibit 174, submitted by the East Timorese Prosecution, December 10, 2000, affidavit of document entitled “Kouwa Memo (4)—Higashi Chimoru de no nihongun [Lecture Memo (4)—The Japanese Army in East Timor],” authored by Iwamura, Shouhachi, published July 16, 1987; document associated with a speech given by Mr. Iwamura stating that a comfort station was set up in Baguia, Portuguese Timor.

<sup>274</sup> Exhibit 176, affidavit of document entitled “Eiko no juchhuutai—Taiwan hohei daini rentai dai juu chuutai [Glorious 10th Company—the 10th Company of the Formosan 2nd Infantry Regiment],” authored by the Association of the 10th Company of Formosan 2nd Infantry Regiment Comrades in Arms, published December 30, 1982—document containing a collection of memories written by former soldiers of the 10th Company of the Formosan 2nd Infantry Regiment, describing the existence of a comfort station in Lautem in the eastern part of East Timor; and Exhibit 177, affidavit of document entitled “Watahira no chisana senki—Senyuu no hi—Taiwan hohei daini rentai daikyuu chuutai hen [Our Little War Records: Monument of War Comrades],” authored by the Association of the 9th Company of the Formosan 2nd Infantry Regiment Comrades in Arms, published September 15, 1981; document containing a collection of memories written by former soldiers of the 9th Company of the Formosan 2nd Infantry Regiment where one soldier was ordered to transport some 70 comfort women from Surabaya, Java to Lautem, East Timor, but due to an air attack the women did not arrive in East Timor, submitted by the East Timorese Prosecution, December 10, 2000.

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 abuse 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. She testified that the Japanese repeatedly raped her along with the other women from the fields:

They would send the men back home and the women they would keep in the place. [There] were four houses full of women. Some of the women, they would take to the bushes and they rape in the bushes. Some of them died. They destroyed everything.

244. Another East Timorese survivor, Marta Abu Bere, also testified before this Tribunal that during the day, she was taken to cut wood in the forests in Marobo with several other women and at night she was taken back to “comfort facilities” where she was raped by up to ten men a night. 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 facilities. 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 time I was so young I didn’t know what was happening, 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. Since my friend and I were chosen as comfort women, our work was only to service the Japanese army, on the morning and the night. 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.

Marta Abu Bere was so weak that her parents succeeded in persuading the Japanese Army Commander that their daughter was too weak to continue working in the “comfort station” any longer.

*(i) Sexual Slavery of Japanese Girls and Women*

245. The Japanese military began recruiting Japanese “comfort women” in early 1938, in the aftermath of the Nanking massacre and mass rape committed by the Japanese soldiers.<sup>275</sup> The recruitment of the women was heavily regulated. Regulations issued by the Home Ministry’s Chief of the Police Bureau entitled “Matters Concerning the Handling of Women Sailing to China” stipulated that the women sought to fill the stations were to be “prostitutes, over 21 years, and free from sexually transmitted diseases.”<sup>276</sup> The expert witness Professor Yoshimi explained that these regulations were adopted because Japan was a signatory to three treaties forbidding the buying and selling of women and

<sup>275</sup> Yoshimi, *Comfort Women*, p. 100; Written statement of Expert Witness, Dr. Hayashi, p. 3; Written statement of Expert Witness, Professor Fujime, Yuki, p. 1.

<sup>276</sup> Yoshimi, *Comfort Women*, p. 100, n. 2.

children.<sup>277</sup> It is also very likely that the Japanese did not want to generate condemnation by Japanese society if it forced, coerced, or deceived Japanese citizens who were not prostitutes into sexual slavery. Professor Yoshimi has documented cases of Japanese “comfort women” who were underage and not prostitutes.<sup>278</sup> While the majority of Japanese “comfort women” had previously been prostitutes,<sup>279</sup> the evidence indicates a significant number of other Japanese women and girls were forced into sexual servitude as well.

246. In considering the situation of the Japanese women who had previously been prostitutes and who became part of the “comfort system,” the evidence indicates that many of these prostitutes initially volunteered for participating in the “comfort system.” Of these, some were free of debt whereas others had their debt purchased by the Japanese army.<sup>280</sup> Professor Yoshimi found some indication that prostitutes may have been promised a patriot’s burial in the Yasukuni Shrine for the spirits of the war dead as a reward for providing sexual services to the Japanese soldiers during the war.
247. Some Japanese women were sold by impoverished parents to the Japanese military, or tricked into becoming sex slaves by promises of jobs such as typists or maids.<sup>281</sup> There were also reports that Korean women living in Japan were routinely tricked into becoming “comfort women.”<sup>282</sup>
248. Whether or not they had once been prostitutes, were of legal age, or whether they had come voluntarily or as a result of deception, many of the Japanese women procured, as those from all over Asia, were eventually forced into sexual slavery as “comfort women.”<sup>283</sup> Japanese “comfort women” were taken to serve in the southwest islands of Japan,<sup>284</sup> particularly in Okinawa,<sup>285</sup> and in Awacha, Miharashitei, Keizuka, Kangetsutei, and Gunjinkaikan.<sup>286</sup> There were Japanese “comfort women” on Hainan Island, as well.<sup>287</sup>
249. While prostitutes, adults, and volunteers were likely the intended targeted group of Japanese conscripts initially, particularly in efforts to curtail condemnation by Japanese society if their own women and girls were forced into sexual slavery, the evidence establishes that Japanese women were forced to become “comfort women” and to serve as sex slaves.

Below, we consider some of the most common characteristics of the “comfort system.”

<sup>277</sup> The International Agreement for the Suppression of White Slave Traffic (1904); The International Convention for the Suppression of White Slave Traffic (1910); The International Convention for the Suppression of Traffic in Women and Children (1921).

<sup>278</sup> Yoshimi, *Comfort Women*, pp. 101-103.

<sup>279</sup> Yoshimi, *Comfort Women*, p. 100; Exhibits 187, 188, 189, submitted by the Japanese Prosecution, December 8, 2000.

<sup>280</sup> Yoshimi, *Comfort Women*, p. 101.

<sup>281</sup> Written statement of Professor Fujime, p. 3.

<sup>282</sup> Yoshimi, *Comfort Women*, pp. 102-103, 110-111.

<sup>283</sup> Yoshimi, *Comfort Women*, p. 103.

<sup>284</sup> Exhibit 183, submitted by the Japanese Prosecution, December 8, 2000.

<sup>285</sup> Exhibit 184, submitted by the Japanese Prosecution, December 8, 2000; Written Statement of Professor Fujime, p. 1.

<sup>286</sup> Exhibit 186, submitted by the Japanese Prosecution, December 8, 2000.

<sup>287</sup> Written statement of Expert Witness, Professor Fujime.

**G. CHARACTERISTICS OF THE MILITARY SEXUAL SLAVERY SYSTEM**

250. Based on the following evidence, the Judges find that the system of Japan's military sexual slavery, commonly referred to as the "comfort women" system, was a standard and integral part of Japan's aggressive war throughout the Asia-Pacific. Policies and procedures for the operation of this system were established at the highest levels of the Japanese government. 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, as well as inhumane conditions of detention.
251. The women were enslaved and repeatedly raped for varying periods of time, most typically several months to two years, though shorter and longer periods were also common. 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.
252. While many of the details of women's experiences differed from country to country and from one "comfort station" to another, there are similarities that cut across national boundaries, demonstrating a degree of regularity characteristic of a highly organised system. This section describes some of the general characteristics common to all of the countries affected.

***1. Military Control and Regulation of the "Comfort Women" System***

253. Pursuant to governmental approval at the highest levels, the Japanese military established sexual slavery facilities for the use of officers and soldiers. Some of these facilities were directly controlled by army or navy units, while others (perhaps the majority) were run by civilians who operated them for personal profit. The civilian managers often functioned as "recruiters" as well. The military was directly involved in the acquisition of "comfort women" by deceptively recruiting, forcibly abducting, arresting, and ordering local officials to cooperate in obtaining girls and women. The military also had the authority to select and control civilian "recruiters."
254. The evidence confirms that military control of "comfort women" was organised at the highest levels. The role of the War Ministry and the military in the "recruitment" process is illustrated by the official directive entitled "Matters Concerning the Recruitment of Women," sent by an Adjutant General in the War Ministry to the Chiefs of Staff of the North China Area Army and the Central China Expeditionary Forces on March 4, 1938. The Recruitment Memo shows that civilian recruiters were subject to the authority and control of the military, and that the military itself was authorised to control the "recruitment" of women.

255. A confidential telegram sent on March 12, 1942 by ANDO, Commander of the Taiwan Army, to TOJO, the Minister of War, entitled "Tai-den No. 602" or "Taiwan Army Telegram No. 602," confirms that the War Ministry was involved in the detailed operations of the "comfort women" system and that military police were involved in the selection of "comfort station" proprietors.
256. Centralised army control of the "comfort women" system extended beyond recruitment. The War Report (Concerning the Rear) for April 11-20, 1939, authored by the 21<sup>st</sup> Army Headquarters, then under the command of ANDO, confirms that the military was involved in the regulation of the "comfort women." Because reports such as these were sent to the superior command, the document also implicates the China Expeditionary Army, the War Ministry, and the army section of the Imperial Headquarters.
257. Hosokawa Tadanori noted in his 1944 Diary of the Journey to the Battlefield that a department in the 11<sup>th</sup> Army Headquarters managed the "comfort stations" and "it was under their authority that agents are allowed to operate." The 11<sup>th</sup> Army was in an area under HATA's command.
258. The military also provided extensive logistical and material support for the sexual slavery facilities. The official documents and testimony of survivors demonstrate that the military transported women all over the region on navy warships and in army trucks. Thus, the military provided the needed permission to transport civilians abroad, for which they required a statement of the purpose of travel. It dispatched soldiers to the warehouses and holding areas where women were confined prior to transport and soldiers were also assigned to guard and keep order in the "comfort stations." The military also supplied the comfort stations with condoms.
259. 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). Professor Yoshimi stated that the Japanese navy issued regulations requiring "comfort women" to be free of sexually transmitted diseases. Pursuant to regulations, doctors carried out initial examinations (often accompanied by rape) and invasive medical examinations of the "comfort women" as often as twice a week, and these examinations were done in an insensitive environment and often violent manner. These STD examinations were conducted for the purpose of preventing sexually transmitted disease among soldiers, and not for the benefit of the women. As evidenced above, the Japanese military continued to issue regulations requiring these STD examinations for the "comfort women" as they set up "comfort stations" across China, and the rest of the Asia-Pacific.
260. The military also issued regulations indicating which "comfort stations" would be used by the various military divisions, and which personnel were to supervise the stations. 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.
261. The creation of "comfort stations," which were purportedly designed in part to stop the rape of local women, did not accomplish that purpose. Rather, it reflected and reinforced



a military culture in which sexual violence was acceptable and institutionalised sexual slavery in a way that would make it less visible to the outside world. This signalled to the soldiers that rape done secretly or with precautions to avoid disease was tolerated and even encouraged. The official documents reveal that the primary concern of the Japanese military was to adequately “supply” the troops with “comfort women” and to avoid hostile reactions in the communities where the women came from or by the international community. There is no indication at all in the official Japanese documentation of anything done or any orders given to ensure that the women were not taken against their will. Nor is there any indication in either the Japanese documents or the testimonies of the survivors of any process to repatriate the women. Two former soldiers who testified before this Tribunal admitted that they told their subordinates that it was acceptable to rape.

262. The testimony of the survivor-witnesses, discussed below, confirms many things revealed by the documents and memoirs regarding the role of the military. As well, it demonstrates the ways in which even these pernicious regulations were broken.

## *2. Who Were the “Comfort Women”?*

263. 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. In the very beginning, the military recruited some Japanese women and girls, particularly but not exclusively from the ranks of licensed prostitutes. However, as the military expanded the war and the problems of rape of local women grew to notorious proportions, the demand for women to work in the stations far exceeded the availability of Japanese women. Thus, the vast majority of women and girls were trafficked from the occupied and annexed territories, while many were abducted in the process of occupying new territories.
264. Many, if not most, “comfort women” came from poor, rural households where the girls had to go to work at an early age to provide support to their families. Some of the witnesses testified that at the time they were enslaved, although they were still just girls, they had already been working outside the home. Already living a difficult life, they were among the most underprivileged people in their own society.
265. 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 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. For example, in Borneo, the Special Naval Police forced women to undergo

invasive examinations and selected those who were virgins as “comfort women.”<sup>288</sup> In Indonesia, Japanese officials and soldiers required many families to hand over daughters over the age of 15. The age of these and other underage girls would have been obvious to those involved in the system. The evidence shows that no effort was made to limit the age of “comfort women” to females over 21 years old, with the single exception of an official regulation applicable only to Japanese women, requiring that they be “prostitutes, over 21, and free from sexually transmitted diseases.”<sup>289</sup>

266. In some instances, women were targeted because of their participation in the resistance movement or because of their relationship to suspected members of the resistance. For example, the Chinese Prosecutors identified Wan Aihua as having been captured and enslaved in China while participating in anti-Japanese activities.
267. In Borneo, women were targeted for enslavement because they had been involved in voluntary sexual relationships with Japanese men even though such relations were prohibited by a military regulation. Other women were forced into slavery based on false accusations or suspicions of having such relationships.
268. Apologists for Japan’s military sexual slavery system commonly assert 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. However, by definition, voluntary prostitutes are not part of the system of military sexual slavery.<sup>290</sup> While the military did recruit some former prostitutes into 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. The expert testimony indicates that Japanese licensed prostitutes were not free to refuse to become “comfort women” or, once a part of the system, they were not free to dictate the nature or terms of their service or to leave.

### 3. *Acquisition or Procurement of “Comfort Women”*

#### (a) *Methods of Procurement*

269. The Judges find that the Japanese military, civilian police, and their civilian agents took “comfort women” into the system by any means available. The methods used cover a broad spectrum ranging from outright force or threats of force, to purchase and deception. Many witnesses testified that they were enslaved by abduction or other types of force, including official conscription, arrest, intimidation by soldiers, violence, and use of traditional leaders to hand over girls and young women. Most of the witnesses from the Philippines, Malaysia, and East Timor, and some from Korea, China, Taiwan and Indonesia, testified that they were enslaved through forcible abduction.
270. For example, Tomasa Dioso Salinog of the Philippines and Ms. X of Malaysia both testified that they were abducted during raids in which their family members were killed. Tomasa Dioso Salinog witnessed her father being beheaded while trying to defend her

<sup>288</sup> See Exhibit 160.

<sup>289</sup> Yoshimi, *Comfort Women*, p. 100, n. 102.

<sup>290</sup> We do not question that some form of voluntary or unregulated prostitution existed contemporaneously with the “comfort women” system; indeed it was part of the concern of the Japanese military that prostitutes in the communities presented a danger of infection with sexually transmitted diseases. The concern of this Tribunal is with the women who were subjected to involuntary sexual servitude by the Japanese military.

from being taken. Esmeralda Boe of East Timor testified that four Japanese men and one East Timorese man came and pulled her into their vehicle. Mun Pil Gi of Korea testified that police abducted her from her neighbourhood and carried her away in a truck. Other Korean witnesses also testified that Japanese soldiers or police took them away on trucks. Rosalind Saw of Malaysia and Ms. Suhanah of Indonesia testified to similar experiences. Wan Aihua of China testified that she was captured by Japanese soldiers.

271. In Borneo, the Special Naval Police arrested women and forced them into “comfort stations.” Statistics compiled by the Korean Prosecutors show that a number of Korean women and girls were also arrested and forced to become “comfort women.”
272. Abduction of girls and women was therefore typical across the region – as confirmed both in the testimony of the survivors and of the expert witnesses. This method was in itself unspeakably traumatic for the girls and women. When being abducted, many women and girls witnessed traumatizing violence such as the rape of their mother or beheading of their father. Some were themselves raped in front of their families. The accompanying violence undoubtedly contributed to their terror and sense of powerlessness over their own fate. In addition to the violence, most of the girls and women experienced the terror and isolation of being estranged from their families and homes and taken to a strange and foreign land, where they often did not speak the language.
273. Another method of securing girls and women for the sexual slavery facilities was official conscription. The evidence confirms that the Japanese military drafted some women in the annexed territories of Korea and Taiwan into sexual slavery as part of the war effort. Witness Teng Kao Pao-Chu from Taiwan testified that the Office of the District sent a draft notice informing her that she was to go to Guangdong Province in China as a “comfort woman.” Although she knew that she was to be a “comfort woman” before she left, she had no choice as to whether or not to go. She testified that she was working as a professional entertainer at the time performing Japanese songs and dance in a nightclub. Teng Kao Pao-Chu stated that it was a practice of the Japanese military to forcibly conscript women who worked in bars as well as brothels to be “comfort women.” Korean girls and women were also forced to go as part of the military war effort. Witness Kim Bok-Dong of Korea testified that a Japanese man and the local village headman forced her mother to sign papers agreeing that because she had no sons, Kim Bok-Dong could be taken away as a “Teishintai” member to a military uniform factory. In this case, deception was employed as part of the draft to lessen resistance.
274. The evidence also demonstrates that “comfort” girls and women were obtained from civilian internment camps. Witness Jan Ruff-O’Herne testified that soldiers, including one whom she believed was a high-ranking officer, came into the camp where she was held and inspected the girls and young women who were 17-28 years old. They selected several girls and women and forced the girls and women to go with them despite their protests and that of their mothers.
275. Some of the girls and women procured for the “comfort stations” were purchased from their economically destitute parents. A Korean witness testified that she and others “were sold to the Japanese.” The SEATIC Bulletin of the Allied Reports states that the Japanese manager of the “comfort station” in Burma, who operated under military authority, purchased the Korean women from their families for 300 to 1000 Yen each, “according to [their] personality, looks, and age,” and once bought, they “became his sole property.”

276. The OWI Report based on the same interviews with “comfort women” and proprietors states that the term of the “contract” “varied from six months to a year depending on the size of the family debt advanced.” Some women and girls were victims of debt bondage: they were taken away in exchange for money that they had to “work” far longer than expected to pay off. The Report indicates that the purported terms of the “contracts” were not respected.
277. The testimony illustrates that the most common method of acquiring women and girls for the “comfort stations” was deception. This was particularly true in Korea, as found by statistics compiled by the Korean Prosecutors. To entice women and girls to “volunteer,” recruiters would promise them jobs doing laundry, working in restaurants, factories, hospitals, or other types of similar work. The Japanese military used Japanese and/or local civilians, schools, and job agencies to take advantage of the women’s poverty and desire for a better life. The IMTFE Judgement noted that soldiers under HATA’s command used false promises of employment in factories to recruit women for forced prostitution, by which we infer they meant the “comfort stations,” during the Japanese occupation of Kweilin in China.<sup>291</sup>
278. The OWI Report suggests that initially the nature of the “comfort service” was assumed to be connected with visiting wounded soldiers and generally making the soldiers happy, and that Korean women enlisted on the basis of these false representations.
279. Japanese agents also deceived women by offering them education or training in skilled professions, such as nursing. Others were attracted by the promise of performing in a theatre. For example, one witness testified that a Japanese recruiter “enticed” her to join a children’s theatre where she “could make money, eat well and wear nice clothes.”
280. Song Shin-Do testified that as a teenage girl she had run away rather than marry. When an older woman solicited her to go and earn money on the battlefield with the promise, “it’s not like marriage and you can live alone,” she agreed, not realizing the conditions to which she would be subjected.
281. Others were motivated by the need to support their families. Lu Mang-Mei testified that she and two friends agreed to go work as servants in a restaurant in order to improve the quality of life of their families, who were all poor. Witness Yuan Zhulin of China testified that she was deceived by an offer of a job washing dishes and cleaning in a hotel because she was poor and had to support five family members, including her own baby.
282. It is a tragic irony that the enslavement of these women resulted, in many cases, from their proud exercise of independent judgement and agency in seeking to better their own lives and the lives of their families.
283. When soldiers or other government officials participated in the process of deceptively recruiting the women and girls, there was always an element of coercion, and sometimes deception and force were combined. For example, even while being physically restrained, assaulters attempted to lessen resistance by telling the victims they were being taken to work.
284. It is clear that deception soon changed to abduction or enslavement. Sometimes the soldiers or recruiters gathered the girls and women in a central location, confining them

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<sup>291</sup> IMTFE Judgement (Roling), p. 393.

and abusing them, sometimes sexually, prior to transport. In other cases, the deception continued until they eventually reached a facility for sexual slavery.

*(b) Agents of Procurement*

285. Like most crimes of a widespread nature, numerous people from many segments of society were involved in procuring girls and women for sexual slavery. Soldiers, military police, civilian police, and other officials were heavily involved in the forcible abduction or deceptive recruitment. Civilians were used as agents of the Japanese to procure women. Civilians were involved primarily as deceptive recruiters although, as noted above, deception quickly turned into coercion, usually with military or police involvement.
286. In some cases, local officials or traditional leaders in the occupied or annexed territories also participated in the acquisition of the girls and women. A Korean witness testified that in Korea, “the township government official came by and told me that if I followed him I would have lots of beef soup and wear nice clothes and I would live happily,” but he subsequently sold her to the Japanese. Kim Bok-Dong of Korea testified that the village headman, accompanied by a Japanese man, ordered her mother to turn her over to them. The Japanese man then took her away and locked her in a warehouse guarded by armed soldiers.
287. The evidence shows that in Indonesia, it was a common practice for village headmen to be involved in recruitment. Japanese officials required village heads to meet a quota, and the headmen, in turn, went to parents to coerce them to surrender their daughters. The Diary of War Ministry Operations states that “it is necessary that village headmen be assigned the task of building comfort stations and strictly administering [them].” Ms. Mardiyem testified that the Japanese mayor of Banjarmasin, Indonesia, named Shogenji, was involved in her recruitment.
288. Based on the above, the Judges find that the Japanese military, together with local and traditional officials and civilian agents, acquired girls and women for the “comfort” system against their will. Whether the girls and women were deceived into becoming “comfort women,” bought or exchanged, conscripted, or procured by force, the salient fact is that they did not consent to becoming part of the “comfort” system. The girls and women who thought they were going to work in such jobs as waitresses, launderers, nurses, or maids did not knowingly agree to provide sexual service or to be subjected to rape and sexual slavery. When the will of the victim is subverted, as the testimony and evidence before us establishes, consent does not exist. This principle applies equally to those women who were prostitutes at the time of recruitment and were deceived as to the conditions of the sexual servitude.

*(c) Assignment & Transport*

289. The evidence shows that while some of the “comfort women” were abducted and forced into slavery in or near their communities, the majority were transported great distances to be close to the Japanese troops. The Japanese military was intimately involved with the transportation of the “comfort” women and girls, both at the outset of and during the enslavement process. Some women and girls were taken to the frontlines where they were not only raped, but also exposed to the dangers inherent in being on or near battlefields.

290. Some witnesses testified that they were enslaved in their own countries, including those from China, Taiwan, Indonesia, the Philippines, Malaysia and East Timor. Others travelled extremely long distances. Lin Shen-Chung (Iyang-Apay) of Taiwan was enslaved on the mountain where her tribe had lived before the Japanese forcibly removed them. Mun Pil-Gi and Kim Gun-Ja were taken from Korea to Manchuria. Ha Sang-Sook, Kim Yong-Suk, and Song Shin-Do were taken from Korea to China. Lu Mang-Mei was taken from Taiwan to Hainan Island, China. Ms. Mardiyem was taken from Yogyakarta to Banjarmasin, both in Indonesia.
291. A few witnesses were enslaved for as long as seven or eight years, and were transported to several different countries during that time. Pak Yong-Sim was taken from Korea to Nanking, China, then to Rashio, Burma and Lameng, China. Kim Bok-Dong was taken from Korea to Guangdong, China, then to Hong Kong, Singapore, Java and Sumatra, and back to Singapore. Teng Kao Pao-Chu was taken from Taiwan to Jing-Shan-Si, China, then to Hong Kong, Singapore, and Burma. Song Shin-Do was transported to many different areas of China during her enslavement.
292. Several women testified in detail to military involvement in their transport, including transport by warships, military trucks, and with military escorts. The transport was often in itself arduous, and particularly terrifying to those who had never previously travelled away from home. Kim Bok-Dong testified that during the long and complicated journey to Guangdong, she rode first in a boat from Pusan to Shimonoseki, then in a cargo ship to Taiwan and stayed there for one month, monitored by someone who said he was with the Japanese police. Before boarding a ship to Guangdong, she had to put on a "National Defense Uniform." Lu Mang-Mei testified that she went to Hainan Island on a warship carrying military personnel, passengers, and goods.
293. Kim Bok-Dong testified that some facilities were mobile, taking the women as a group from country to country. In that case, women were transferred between facilities under the supervision and guard of Japanese soldiers.
294. Transport on military vehicles created grave danger for the girls and women. Many women were killed or injured while being transported on military vehicles. Teng Kao Pao-Chu testified that while travelling between "comfort stations" she lost hearing in her right ear when a submarine shot the ship she was on with a cannon. Ahn Buk-Soon gave testimony regarding one incident in which some women were killed on a military vessel: when the Japanese soldiers abandoned a "comfort station" in Singapore, the women who had given birth to "Japanese" children were sent home by the Japanese on a boat. The boat sank and all those aboard were killed.

(d) *Experiences upon Arrival at the "Comfort Stations"*

295. On arrival at the "comfort station," many girls and women were confronted for the first time with the terrifying realization that they were to be confined there and repeatedly raped. For those who had been deceived into thinking they were going to good jobs, arrival at the comfort stations was particularly traumatic. This was also the stage at which some of the girls and women were first raped and beaten. Jan Ruff-O'Herne described her experience arriving at a "comfort station" in Indonesia:

The house was all surrounded by fencing and barbed wire, so we could see straight away that there was no escape possible from the house. . . . Before

long we were told that we were in this house for the sexual pleasure of the Japanese military. It was as if my whole world collapsed from under my feet when I heard this.

Kim Yong-Suk testified that a “comfort station” in Shenyang, China at an army base, was “surrounded by very high walls and barbed wire, with dogs barking. . . and guards guarding everywhere.” She wanted to leave but the policeman who had brought her there left her there.

296. Several witnesses testified that the first thing that happened on their arrival in the station was being forced to undergo a medical examination for sexually transmitted diseases. Song Shin-Do testified that this was when she first realised she was to be required to provide sexual services. She stated,

It was at this point that I who had left my home and come so far to work and be independent, first received the inexpressible shock of what I was about to do. . . . I refused to get on the board and struggled against the medical officer, but he forcibly stripped off my clothes and examined me.

Both Ha Sang-Sook and Ms. Suhanah testified that the doctors noted their virginity.

297. Kim Bok-Dong testified that the doctor who forcibly examined her was also the first to rape her. She testified that when she tried to run away, he slapped her with such force that her cheeks went numb. The rape itself she described as “utterly unbearable. I bled between my legs and it hurt as if I had been ripped open. My vagina swelled, and burned so much I couldn’t urinate.”
298. Ms. Suhanah testified that the doctor examining her raped her. Because she cried uncontrollably, one perpetrator slapped, shook, kicked and beat her. She said, “He asked, ‘Do you want to live or die.’ I wanted to live, I gave up.”
299. Many other witnesses told of the rapes they suffered their first day in the “comfort station” or soon after their arrival. Ms. Mardiyem, held in Indonesia, testified that on the first day, “from 12-3 pm, six men raped me. Doctor raped me once, others raped me twice. I was raped 11 times in three hours.” She shouted and threw bloody underwear in the manager’s face. Song Shin-Do testified that at first, she ran out of the room, not knowing what to do. But the manager beat her, confined her in a narrow room and withheld her food, and finally soldiers raped her while she was crying. Ha Sang-Sook testified that after the doctor examined her, an older man raped her and told her that from that night on, she would have to serve dozens of Japanese soldiers every night.
300. The introduction to life as a “comfort woman” traumatised the girls and women. Kim Bok-Dong testified that the day after her first rape, she and two other women tried to kill themselves. Jan Ruff-O’Herne testified, “In the early hours of the morning, there were seven frightened little girls, all huddled together, all crying over lost virginity.”

#### **4. *Conditions of the Facilities***

##### *(a) Types of Sexual Slavery Facilities*

301. The types of facilities used by the Japanese military varied. Many of the sexual slavery facilities were buildings constructed on or near Japanese bases or camps, but others were

nothing but makeshift tents partitioned off into tiny rooms. Some facilities were caves used by soldiers.

302. A large number of the facilities were commandeered private homes, hotels, dormitories, or other such buildings. The typical set-up was a large building partitioned off with plywood boards into small rooms in which the girls and women were isolated. Rosalind Saw described the room of a “comfort station” in Malaysia as having “one bed, one table.” In his memoir, a former soldier, Megumi Teruma, describes the “comfort station” on the front lines beyond Kweilin, China: “In a wooden barracks, there were five small rooms about 5 meters square, with dirt areas outside to take off one’s shoes.”
303. In other cases, many women shared the same room. Ms. Suhanah testified that the Bandung “comfort station” where she was enslaved had “a special room for raping.” There were two beds in the room and two women might have to serve soldiers at the same time. Marta Abu Bere testified that in East Timor, many women were raped in the same room, each in one corner.
304. Other witnesses testified that they were confined in rooms and forbidden to speak to the other women there. Song Shin-Do, who was confined in various places in China, and Ms. X and Rosalind Saw, who were confined in Malaysia, all testified to this effect. Tomasa Salinog, who was confined in a “big house” in the Philippines, and Maxima Regala de la Cruz, who was confined in a garrison in the Philippines, testified that they remained locked in the same room to which the soldiers first took them.
305. One witness testified that on the front lines, soldiers set up a tent to serve as a “comfort station.” Two other witnesses testified that soldiers enslaved them in caves. In Taiwan, the local policeman first forced Lin Shen-Chung (Iyang-Apay) to work as a seamstress for the Japanese army. After the first day, the soldiers would not let her or the other women leave; after three months of this, a Deputy Captain, officer named Narita, took her to a cave in the mountains that was used to store boxes. There she was forced to have sex with Japanese soldiers. In China, soldiers captured Wan Aihua and forced her into a large cave where they began raping her the first night, thereafter daily.
306. Other “comfort stations” on the front lines were mobile units that “moved with the army,” as Teng Kao Pao-Chu and Kim Bok-Dong testified. In general, there was a strong correlation between the presence of the Japanese military and sexual slavery facilities.

*(b) General Living Conditions in the Sexual Slavery Facilities*

307. Some witnesses testified that they lived in “miserable conditions” with poor food, such as “rice and pickles” daily. Sometimes women were not able to wash because of the large number of soldiers waiting in line. Many women described the life in the “comfort station” as “inhumane.” Poor living conditions also made the “comfort women” more susceptible to diseases such as malaria and tuberculosis. Pak Yong-Sim testified that in Nanking, “comfort women” were malnourished and caught diseases. Song Shin-Do testified that the “comfort women” in Wuchang contracted dysentery, malaria and lung-related illnesses, in addition to sexually transmitted diseases. Lu Mang-Mei stated that she was infected with malaria on Hainan Island.
308. The OWI Report states that the twenty “comfort women” interviewed lived “in near luxury in Burma as compared with other places,” that “they lived well because their food and material was not heavily rationed and they had plenty of money with which to



purchase desired articles.” However, the Report then goes on to state that the women had to pay the proprietor exorbitant prices for food and other items, and that they spent the last part of the war in foxholes during the Allied bombing. The characterisation of the living conditions as being “near luxury,” at best, underscores that conditions were much worse in other “comfort stations.”

309. The conditions in the sexual slavery facilities based on the front lines were even worse. The women were subjected to a higher degree of violence from soldiers who were angry, scared, and geared for aggression. Being so close to the fighting of the war, they lived in constant fear for their lives. Pak Yong-Sim testified that in 1943 or 1944 the military drove the women from one facility in Rashio to Lameng, where the women were forced to serve the soldiers of the 56<sup>th</sup> Division as sexual slaves while they were under fire, and that most of these women were killed. The OWI Report also states that many “comfort women” in Myitkyina, Burma were killed by Allied bombing and that the women serviced the soldiers even in foxholes.
310. Song Shin-Do testified that on the front lines in China, there were no medical officers to examine the women for sexually transmitted diseases, while they were continually exposed to the risk of infection. There, they also had to do sentry duty, not knowing when the Chinese would attack. Song Shin-Do testified that once, she was forced to witness a massacre of Chinese prisoners of war and then serve liquor at a party.
311. Song Shin-Do also testified that as the war drew to an end, soldiers became increasingly desperate and wanted her to commit seppuku (ritual suicide) with them. This was terrifying to her because, as she said, “I wanted to live under any circumstances.”

## 5. *Physical and Mental Violence*

### (a) *Relentless Rape and Accompanying Violence*

312. Witness after witness testified to the horror, pain, fear, violation, and helplessness they experienced when soldiers raped them. In the “comfort stations,” women and girls had to endure rape during most of their waking hours, for periods ranging from a few months to many years. Witnesses said that as a result of this, their genitals were swollen and they experienced constant bleeding. Many witnesses told how they could not walk, sit, sleep, or urinate without pain. Marta Abu Bere testified: “First of all, there were ten men who raped me. One got off and the other would replace him. They would do it all over again. We were treated like animals. We could not do anything. If we do something, we would be choked. I could not walk. How could I walk if I was raped by ten men?”
313. Tomasa Dioso Salinog, like many of the witnesses, was still a child when she was raped. She testified that she was chubby and that “the soldier placed his hands on my thighs and other parts of my body.” He pushed her to the floor and hit her head with a hard object when she struggled. Other soldiers also raped her.
314. Lu Mang-Mei testified that the first time she was raped, she felt cheated, scared and alone. She tried to resist, but the soldier said, “I already bought the ticket.” When she protested that she came to work as a waitress, the soldier said, “It is said so, but it is not true.”

315. Wan Aihua testified, “Five soldiers came in at the same time and raped me so it was like a gang rape.” Maxima Regala de la Cruz testified, “I bled every time since I did not have my first menstrual period yet. I cried since I always felt pain.”
316. Kim Yong-Suk testified about the harrowing experience of sexual torture. A soldier named Nakamura cut her genital area with a sword when she didn’t understand what he wanted. Then he raped her. Jan Ruff-O’Herne testified that an officer tortured her by running a sword down her entire body until she was completely immersed in fear. She indicated to him that she was willing to be killed rather than be raped, but he laughed and then tortured and raped her.
317. Pak Yong-Sim testified that once, when she was too tired to respond to a soldier’s demand, he cut her neck with a long knife and then raped her while blood was soaking her body.
318. Despite the women’s debilitating pain, they were forced to continue serving the long line of soldiers who paid for tickets. Kim Bok-Dong and Yuan Zhulin both testified that ointment or cream was used to enable soldiers to penetrate women who were already suffering extreme pain and swelling of their genitals.
319. Maxima Regala de la Cruz testified to the constant terror she felt with every rape: “Each time they pointed a bayonet at me, I trembled like this. I didn’t know what they were doing to me any more.” She testified that she fainted many times. Mun Pil-Gi also testified that she fainted the first time a soldier raped her.
320. The testimony shows that some officers kept individual women in their quarters as personal sexual slaves. Two witnesses testified that they were forced to service individual officers for a period of a time. Yuan Zhulin, who was confined in China, testified that for 6 months, an officer named Fujimura “monopolised” her. She said, “He did not respect me because he liked me. He only wanted me as a sexual partner, as a sexual toy for his sexual pleasure.” She had to stay with him at night. Tomasa Salinog, who was held in the Philippines, testified that after she escaped from the “comfort station,” an officer named Okumura abducted her again and forced her to live with him and required her to perform domestic labour as well as sexual servitude.
321. Officers in general had greater privileges of access to women, including the privilege to stay all night with a woman in the “comfort station,” as several witnesses testified. Two witnesses testified that they were taken to the officers’ group quarters. Ms. X, who was confined in Malaysia, testified that she was first taken to a bungalow, which she was told was the quarters of “high ranking soldiers,” and locked in a room there for one month. She was raped by 5-6 soldiers every day while there, and another one every night. Ms. Suhanah, who was confined in Indonesia, testified that she was brought to the officers’ house several times a week.
322. The women and girls were kept in a constant state of terror through frequent beatings, threats, and torture. Witnesses testified over and over again that the soldiers and managers beat and tortured women who resisted rape, who escaped or attempted to escape, who were exhausted or in pain, or with whom the soldiers were dissatisfied for any reason. Mun Pil-Gi testified, “They kicked me, hit me when I was not very good with them.” She also testified, “I was burned with an iron bar under my arm.” Ha Sang-Sook testified, “If a soldier was dissatisfied with any of the women, he complained

directly to the proprietor who then beat and kicked that woman.” Kim Bok-Dong testified that a soldier hit her because she was menstruating. Ms. X also testified that she was beaten when she was unable to cooperate in sexual acts because of severe pain. One of the most egregious examples was told by Ms. Mardiyem, who was forced to have an abortion at age 14 by Chikada, the “comfort station” manager. Because she was already five months pregnant, the “medicine” used for abortion did not work, and so they pressed on her abdomen till the foetus came out. Chikada then raped her.

323. As discussed above, Ms. Suhanah and Song Shin-Do were both beaten for resisting rape at the outset of confinement. Kim Gun-Ja also testified that she was beaten for resisting. She testified that soldiers hit her on her right ear with such force that they ruptured her eardrum, leaving her partially deaf. Ha Sang-Sook testified, “When I refused to allow a soldier to go twice, I was sometimes beaten.”
324. Escape was punished with extreme forms of torture. Wan Aihua testified that she escaped twice from the cave where soldiers kept her and several other women as sex slaves, and was tortured in retaliation for these escapes. After the second escape, she was taken out of the cave naked, rendered unconscious, and then hung naked. Afterwards, the soldiers threw her into freezing water. She continues to suffer the physical effects of her injuries. Yuan Zhulin suffers from terrible headaches, insomnia, and sleepwalking as a result of torture inflicted on her as punishment for escaping. Another witness, Chun-Ok-Soon, was tortured with an iron rod on her lips, tongue, and breasts for trying to escape. She could not speak for many years because of the damage.
325. The witnesses testified that they suffered other lasting injuries from beatings and torture, such as broken bones that never healed properly, deafness, scars, headaches, nightmares, and digestive problems.
326. Most women testified that they were relentlessly raped by numerous soldiers, day in and day out, regardless of the circumstances, including during menstruation, pregnancy, illness, or excessive swelling. Kim Bok-Dong testified that in Guangdong fifteen soldiers came daily, but on the weekends the number exceeded fifty. Then officers arrived in the evening, many of whom stayed overnight. Other witnesses testified to numbers anywhere from “2, 3, 4” to 60 men per day. Most witnesses testified that they had to serve more than ten men every day. Many were gang raped or subjected to repeated rape by the same soldier. Ms. Mardiyem testified that in Indonesia, she was raped 20 to 30 times a day, many of whom raped her twice. Yuan Zhulin testified that, in Hubei Province, China, soldiers would change condoms up to four times while having intercourse with her.
327. Most witnesses had to provide sexual services every day, without rest days, and for most of their waking hours. Some also had to sleep with their rapists at night. Ms. Mardiyem testified that she worked 12 noon to 5pm, again from 7pm till midnight, and sometimes from midnight till morning. While some were able to rest during menstruation, others testified that they were forced to provide services even then. Several witnesses testified that pregnant “comfort women” were forced to work up until the sixth, seventh, or eighth month.
328. Witnesses before this Tribunal repeatedly testified that they could not refuse soldiers, that they succumbed to the rapes in order to live and, as discussed above, that they were tortured and beaten as punishment for any kind of resistance. Wan Aihua testified, “I felt I had no choice but to obey them.” Lu Mang-Mei testified that she was not allowed to

say “No”. She said, “I obeyed in order to live.” Esmeralda Boe and Marta Abu Bere both testified that they feared their parents would be killed if they refused to go with the soldiers.

329. As discussed above, some women were able to refuse soldiers while menstruating, or when they were given medical permission to “rest” because they were too swollen to be penetrated. Some were also able to insist that soldiers wear condoms. However, others testified that they could not even exercise these small degrees of control over their bodies. Song Shin-Do testified that soldiers sometimes “demanded barbaric and dominant sexual acts.” As described more fully below, Yuan Zhulin was not even able to refuse intercourse while mourning the death of her infant daughter.
330. Some women testified that they were forced to continue providing sexual services during most of their pregnancies, and had to return to “work” soon after delivery. Whether a woman had her pregnancy continued or terminated often depended on the religious practices or requirements of the country. Some “comfort stations” expelled pregnant women. Lu Mang-Mei testified that she was allowed to go home on a medical certificate when she was eight months pregnant and infected with malaria. She stated that she thought it was because she was no longer of any use. Song Shin-Do testified that her first pregnancy ended in stillbirth after 7 months during which she was forced to continue servicing the soldiers. During her second pregnancy she was expelled from the “comfort station” and did laundry and cleaning for a navy “comfort station” in the meantime. After giving birth, she was twice forced to leave the babies with strangers and return to work as a “comfort woman.” For subsequent pregnancies, she used a folk remedy to abort. She testified, “I still feel sorrow over not being able to give birth or raise my children.”

*(b) Illnesses and Deteriorating Health*

331. As is common in situations of slavery, the health of the girls and women deteriorated greatly in the “comfort stations.” Scores of women and girls perished, mostly from murder, disease, malnutrition, exhaustion, brutal treatment, or by committing suicide.
332. Disease was rampant in the sexual slavery facilities, particularly gonorrhoea and syphilis. Most witnesses testified that some condoms were available, but very often there were not enough and they had to be washed and re-used. One witness stated that she fought with men who would not wear a condom, but others testified that soldiers often insisted on having sex without a condom in the apparent belief that the “comfort women” were free of STDs. Because of the failure of many soldiers to use condoms, and the insufficient availability of condoms, there were numerous pregnancies and a high rate of sexually transmitted diseases incurred by the women.
333. Some witnesses testified that they contracted a sexually transmitted disease, including Lin Shen-Chung (Iyang-Apay) who stated that she had to hide this from her community because chastity was so important to them that they would kill a woman who violated this standard. Another witness stated that she did not find out she had syphilis until later, when her son was born with symptoms. The expert testimony indicates that the rate of sexually transmitted diseases among former “comfort women” was extremely high compared to the rest of the Korean population, and even compared to the population of highly sexually active individuals.

334. Other diseases were also rampant, and medical treatment for anything other than STDs appears to have been unavailable. Lu Mang-Mei testified that she contracted malaria while pregnant. She attributes her child's death several weeks after his birth to her malaria. Song Shin-Do testified, "Among the 'comfort women,' many caught tuberculosis, malaria and sexually transmitted diseases. Patients were moved to separately prepared small rooms. Inside the rooms were also the dead left by the enemy bombings."
335. The high rate of diseases is shown by documents of regular examinations of women from two "comfort stations" in Iloilo, the Philippines, which show the rate of diseases noted among a group of thirty women over a period of six months.<sup>292</sup> The records show a high rate of gonorrhoea. The women were also found to be suffering from vaginal ulcers, vaginal inflammation, vaginal eczema, metritis, appendicitis and bronchitis.
336. Mistreatment of those who succumbed to illness went as far as murder. Pak Yong-Sim testified that in Nanking, "comfort women" who caught diseases eventually died of them, or were thrown into a river, or taken away.

(c) *Forced Medical Examinations and Mistreatment*

337. Many witnesses testified that they had to endure regular examinations for sexually transmitted diseases. In reports of these examinations, the condition of their genitals was noted. Jan Ruff-O'Herne testified, "the examinations were as bad as the rapes," and that the medical officers left the door of the examining room open so that soldiers could watch.
338. At times, doctors raped the women after they examined them. Jan Ruff-O'Herne testified that she complained about her rapes to the doctor because she thought he would have higher morality, but instead he laughed and raped her himself. As noted previously, some witnesses testified that doctors were the first to rape them upon arrival.
339. Many witnesses testified to debilitating medical treatment that served only to suppress symptoms that would prevent them from continuing to "work." The most notorious treatment was the "No. 606" injection, identified as salvarsan, an arsenic compound.<sup>293</sup> Ha Sang-Sook and Kim Gun-Ja both testified that this treatment was given for syphilis. Their testimony was confirmed by the expert testimony. According to the expert testimony, salvarsan is not a good cure for sexually transmitted diseases, but only a temporary panacea. This meant that the women were constantly exposed to reinfection while their bodies were still coping with a previous infection. Kim Bok-Dong testified that in Guangdong, each woman was given "606" a few times a month regardless of infection, and it caused her to experience a strange smell and to become dizzy.
340. Some girls and women were subjected to forced medical treatment. Yuan Zhulin testified that the proprietors of the sexual slavery facilities in which she was held applied against her will a liquid contraceptive medicine directly to her sex organs which caused haemorrhaging and pain for over a month. She also was also given injections against her will, to which she attributes her subsequent infertility.

<sup>292</sup> Registry Exhibits 63A-V, 64.

<sup>293</sup> Korean Appendix No. 7.

341. In addition to the forced examinations and medical treatment described above, some girls and women were subjected to forced abortions. Some witnesses testified to “medicine” being given to induce abortions. Lin Shen-Chung (Iyang-Apay) testified that women were required to tell the doctor if they went a month without menstruation and he would give them medicine to abort.
342. There is additional evidence of cruelty towards pregnant “comfort women.” For example, Pak Yong-Sim testified that she had seen Japanese soldiers stab a pregnant woman in the belly. The Prosecutors also presented evidence that Japanese soldiers cut the foetus out of a pregnant woman with a sword.

### **6. *The Facade of Prostitution***

343. The “comfort stations” were typically set up to appear and work as brothels, where the soldiers paid to use the women’s services. The fee was set by military regulations. However, according to the testimony of witnesses at this Tribunal, most women did not receive any part of this money themselves. Kim Bok-Dong testified, “At the time, I didn’t even know I was supposed to receive money.” Song Shin-Do testified that she received “next to no payment,” and that when she was given nominal wages, it was then taken away as a “National Defense Donation.”
344. A small number of “comfort stations” split the money with the “comfort women,” with the managers taking fifty or sixty percent. Lu Mang-Mei and Teng Kao Pao-Chu testified that they received a percentage of the money, and Lu Mang-Mei testified that she managed to buy her own passage home for 99 yen when she was finally released on a medical certificate.
345. Teng Kao Pao-Chu stated that when she received money she gave it to soldiers to send home to her family, although the money never reached them. Ha Sang-Sook testified that she received useless military currency. Ms. Mardiyem testified that she collected baskets of tickets and was supposed to be able to redeem them at the end of the war, but they were worthless. Ms. X testified that she received 5000 yen at the end of the war when she was released from the “comfort station.” It may be that as a result of the compensation, she was rejected by her village after returning home at the end of the war and had to move elsewhere. Some would have indignantly refused payment even if offered so as not to be confused with prostitutes.
346. Most witnesses testified that they were not paid, but instead the proprietors provided them with food, clothing, and makeup. Soldiers sometimes gave the women money or gifts, according to the OWI Allied Report on the Burma “comfort station.”
347. When women received money, either from the “comfort station” proprietors or as gifts from soldiers, they were often forced to exchange it for necessities such as food, clothing, and condoms. They had to purchase these items from the “comfort station” proprietors. Ha Sang-Sook testified that she purchased “condoms and tissue” from the proprietor. According to the OWI Report, the proprietors charged women exorbitant prices for their food and clothing. Ha Sang-Sook also testified that when she attempted to borrow money for train fare and clothes, she was told that it would take her three years to pay off her debt, and so she stopped trying to borrow more.
348. Many women were recruited with the deceptive promise of a job and ability to earn decent money. Thus, in addition to their other suffering, the lack of payment meant that

their efforts to improve their own and their family's living was not only in vain; it also exacerbated their poverty as the women could not earn other wages while enslaved in the stations. This was illustrated poignantly by the testimony of Yuan Zhulin that her baby daughter died of hunger while she was in the "comfort station."

349. Although many of the facilities for sexual slavery were set up to appear as if they were brothels, not all of them functioned this way. In addition to Wan Aihua, the witnesses from East Timor and the Philippines spoke of being confined and raped without any pretence of prostitution. Where there was not even the pretence of prostitution, the conditions were exceptionally brutal, such as when women were enslaved in caves. Lin Shen Chung (Iyang-Apay) testified that she never received money, but was subjected to strict regulations. One was that she was required to report to a doctor if she had a month without menstruation, and the doctor gave her medicine to cause an abortion.

### 7. *Control over Movement*

350. Once procured, the girls and women were deprived of their basic liberty of movement, including the liberty to leave the "comfort station" at will. Many witnesses testified that they were not permitted to leave their room or that they had to remain within the "comfort station." Ms. Suhanah testified, "I wasn't allowed to go out, nor to see people walking outside. I was just like a prisoner or a thief." Some, like Rosalind Saw, were allowed out only for the weekly medical checkup. Ms. X, whose brother had been arrested when she was abducted, was allowed to go and search for him when she found out that the Japanese were killing Chinese youths. She did not find him, but was traumatised to see severed heads of several young Chinese men.
351. The rules forbidding women to leave were enforced by the prison-like setting of the "comfort stations." This included locked doors, soldiers and military police acting as armed guards, the presence of guard dogs, barbed wire surrounding the building, and barred windows. Some of the "comfort stations" were within military bases or garrisons. Another obstacle to the women's freedom of movement was the presence of soldiers in the area surrounding the "comfort station." These soldiers would return any women who managed to escape, as described by Ms. Mardiyem.
352. Escape from the sexual slavery facilities was also prevented by lack of resources, inability to speak the language, lack of familiarity with the foreign country, and the dangers of the war. These things prevented the women and girls from being able to travel home even if they had succeeded in escaping. Song Shin-Do and Mun Pil-Gi described the combination of factors that prevented their escapes. Song Shin-Do stated, "Because I didn't know where I was, I didn't speak the language, I had no money, I had no idea how to take the train, and the area was surrounded by soldiers, escape was impossible." Mun Pil-Gi said, "I couldn't escape, I would need to know all the places; we were surrounded by barbed wire and all military stations, and I was young and scared."
353. As discussed above, women who escaped and were recaptured were subjected to extreme forms of torture. As Kim Gun-Ja testified, public torture of women who tried to escape served to intimidate and deter the others. After the proprietor "beat one woman ferociously," she testified, "I couldn't dream of escaping."

## **8. *Isolation and Separation from Families***

354. Women suffered terribly from being separated from their families and loved ones. For example, Yuan Zhulin testified that when her baby was ill and dying of hunger, she was allowed to return home for a visits but that her daughter died before she arrived. She was not permitted to stay long enough to see her daughter buried, and the officer who “monopolised” her services at that time demanded intercourse immediately upon her return, thus denying her any period to mourn. Most had no news about loved ones and worried constantly about them during the war. Teng Kao Pao-Chu had to leave her adopted daughter and other family members behind and suffered constant homesickness, loneliness, and anxiety because of her imprisonment. All of the women endured isolation and loneliness at being separated, usually without any communication for a period of years, from friends and family. Some testified they were not allowed to talk to the other women in the “comfort stations” or to speak in their native language. Song Shin-Do and Kim Bok-Dong testified that in “comfort stations” filled with Korean women, they were forbidden to speak the Korean language and had to instead speak Japanese.

## **9. *Sexual Slavery Accompanied by Additional Forms of Forced Labour***

355. The sexual slavery was occasionally accompanied by additional forms of forced labour. Some Japanese soldiers took women as forced labourers and then also used them as sexual slaves. In Taiwan, the army first compelled women to work as forced labourers and confined them for that purpose. Witness Lin Shen-Chung of Taiwan testified that the Japanese army first forced her and five other women to work as seamstresses, keeping them confined at night and not allowing them to go home. After three months, they began taking the women to a cave at night, one by one, to be raped by soldiers. One soldier told her, “Since you came to do work, this is part of your work, too.”
356. In East Timor, forced labour and sexual slavery were typically accomplished by military control of the territory and population, so that the girls and women had no choice but to obey soldiers. Witnesses Esmeralda Boe and Marta Abu Bere of East Timor testified that the Japanese occupying army forced women and men to do physical labour such as farm work and cutting down and hauling timber during the day, and then at night took the women away and raped them. Evidence submitted relating to the District Court case of Filipina former “comfort women” shows that in the Philippines, some “comfort women” also had to do forced domestic labour or dig foxholes.

## **10. *Treatment as Property and Objects***

357. The Japanese military treated “comfort women” as property and regarded their worth solely in terms of their use to the military. The evidence shows that the army regarded the women as military supplies and transported them along with weapons and soldiers. The dehumanization and objectification of the women allowed the soldiers to treat women’s bodies as commodities to be used, abused, and disposed of at will. For example, Professor Yoshimi records the comments of a Japanese officer whose words demonstrate the callous disregard the soldiers had for the “comfort women,” regarding them as no different than human toilets:

During the battle, which lasted about fifty days, I did not see any women at all. I knew that as a result of (being without access to women), men’s mental condition ends up declining, and that’s when I realised once again



the necessity of special comfort stations. This desire is the same as hunger or the need to urinate, and soldiers merely thought of comfort stations as practically the same as latrines.<sup>294</sup>

358. Many testified that were treated as if they were less than human. Esmeralda Boe and Marta Abu Bere testified that they were “treated like animals,” and no one afforded any respect whatsoever for their human dignity. Jan Ruff-O’Herne testified that when she and the other “comfort women” resisted, “we were told they would do with us as they liked.” Teng Kao Pao-Chu said that they called them derogatory names.
359. The women were deprived of complete control over their sexuality, as well as such rights as their basic freedom of movement, their existing family relationships, and their ability to give birth and raise their children.
360. Many witnesses confined in various geographical areas testified that they were given Japanese names by which they were known in the “comfort stations” and that soldiers identified them by these names. Some women were identified by a name or by a room number. Kim Bok-Dong testified that soldiers gave many women the same names because the name was popular among the soldiers. Jan Ruff-O’Herne testified that the names the soldiers gave her were all names of flowers. She testified that the managers displayed the women’s photographs on a table with the Japanese names underneath, so that the soldiers could choose among them. Such objectification deprived the women of their individual and national identities and labelled them solely as sexual objects, possessed by the Japanese.
361. The renaming was accompanied by racial slurs and domination. Kim Yong-Suk of Korea testified, “I told them my name is \_\_\_ and they said, ‘That’s such an ugly name and your new name is Otaka.’” Another soldier also called her dreadful names for being Korean.

#### ***11. Abandonment after the War – Attempts to Return Home and Reintegrate into Society***

362. Some “comfort women” were summarily killed as the war neared an end, while 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. Witnesses who were confined in Burma, China, Singapore, and Taiwan all testified to having been abandoned. As Song Shin-Do stated, “the army didn’t inform the women.” Rather, many learned that the war was over from civilians employed in the “comfort station” or from the disappearance of soldiers and guards.
363. In Manchuria, Malaysia, and Indonesia, most survivors were simply released from the “comfort stations” when Japan was defeated. Only one witness, Ms. X, testified that she received money from the “comfort station” manager upon her release and was helped to get on a bus to go home.
364. The survivors faced severe hardship attempting to make their way home over thousands of miles of land and sea with no money and, in some instances, while the war was still raging. Pak Yong-Sim testified that a few “comfort women,” who had survived the Allied bombing that had killed the other members of her “comfort station” on the front

<sup>294</sup> Yoshimi, *Comfort Women*, p. 199.

lines of the Burma-China theatre, sought refuge in an air raid shelter where Chinese soldiers discovered them and kept them in detention, treating them as prisoners of war for a year before releasing them. Song Shin-Do testified that she agreed to leave China and marry a Japanese soldier since, as she stated, “I didn’t know how to get to Korea and had no means of supporting myself.” The soldier later abandoned her in Japan where she remained. Ahn Buk-Soon testified that she was left all alone after the Japanese had sent other “comfort women,” who had given birth to part-Japanese children, back to Shimonoseki on a military ship. She testified that she went to the mountains of Singapore, where she survived alone for over a year before eventually making her way home. Wan Aihua testified that after they were released from captivity, she remained in China, leading a life of misery.

365. Some women chose not to return to their home countries or towns. Ha Sang-Sook testified that Koreans gathered together after Japan’s defeat, but she was unwilling to go back home. She stated that she was “wondering what I could do after going back with this body, I decided not to go.” The study done by Young-hee Shim of the Department of Sociology, Hanyang University (“Silence and Social Aftermath of the Korean ‘Comfort Women’: Focusing on their Life After the Return”) reports that some Korean women returned to Korea, but rarely to their hometowns. Young-hee Shim emphasises that because this was a sharp break with the traditional social values of the time the women must have had compelling reasons to avoid returning home.
366. A few survivor witnesses testified that, although they had been able to escape successfully from the “comfort station” during the war, they were not safe. Yuan Zhulin hid on a boat under the protection of a “kind landlord.” Maxima Regala de la Cruz testified that she and her mother returned to their home after escaping their rapes, but they continued to live under Japanese control.
367. Some witnesses testified that they had been released from their “comfort stations” before the war ended. For example, Lu Mang-Mei was allowed to leave on a medical discharge, and Jan Ruff-O’Herne and a group of Dutch Indonesian women were returned to a civilian internment camp, where they remained confined until the war ended. In the camp, they were rejected by other internees who referred to them as “whores.” The women and girls who were allowed to leave the “comfort stations” were virtually always deemed “useless” because of disease, pregnancy, or illness.
368. Some women were kept as forced labourers even after Japan’s defeat. Kim Bok-Dong testified that she was taken along with 300 other women to the 10<sup>th</sup> Army Hospital, where she was forced to work as a nurse and do cleaning, until a relative came looking for her and brought her home.
369. Many women did not survive their trip home from the “comfort stations.” Ahn Buk-Soon testified that, of all the “comfort women” in her station, she was the sole survivor, as the other women were killed when the ship transferring them was bombed and sank.
370. The women who attempted to return home often endured months to years of hardship and continued exile. Teng Kao Pao-Chu returned home to Taiwan from Burma by travelling through Thailand and Vietnam, working in bars and factories along the way. She spent a year in Vietnam before taking the “army’s ship home.” Tre Gop-Soon walked from Manchuria to Korea, a journey that took four years, during which she witnessed many deaths and suffered continuous adversity. Kim Gun-Ja described her month long journey

in which she walked, crossed a river, and rode freight cars to travel from Manchuria to Korea.

371. During the immediate post-war period, most “comfort women” had no support system to which they could turn. In some cases, women’s families helped them, cared for them, and gave them some initial assistance to enable them to survive. However, there was no community or national resources to support them or redress their physical wounds, illnesses, and emotional trauma. Young-hee Shim’s study draws attention to the burden of daily life for all Koreans after Japanese colonialism when there was no nation-state to provide these types of resources for people.
372. Witness testimony, together with Young-hee Shim’s study, demonstrates that in addition to the context of hardship and trauma prevalent in post-war society, patriarchal notions of “chastity ideology” and an adherence to restricted roles for women in public and private life exacerbated the suffering of the surviving “comfort women” and rendered them invisible and the harm they suffered unnamed and unmentionable.

## **12. Conclusion**

373. The suffering endured by the “comfort women” began with their illicit procurement, often by deception or abduction after seeing their family raped or killed, and continued daily through the time enslaved and repeatedly raped and otherwise tortured, abused, and mistreated over a period of months or years. That women and girls could not exercise control over their own lives was demonstrated by their being denied the ability to make even the most basic decisions about their bodies, their movement, their identities, and their future, with every facet of their life in the “comfort stations” controlled and manipulated by the Japanese or their agents.
374. The next section examines evidence of one of the countless incidences of sexual violence committed outside the context of the “comfort stations.” The section following that contains our findings as to the continuing harms suffered by the survivors of both the “comfort stations” and the rapes at Mapanique.

## **H. THE RAPES AT MAPANIQUE**

375. Despite the availability of “comfort stations,” the Japanese military commonly committed rape against local women in communities being conquered or occupied, both by design or as a result of ineffective control. Most of these crimes were not prosecuted before the IMTFE. The rape of women at Mapanique in the Philippines, which forms the basis of Count 3 of the Common Indictment, is but one example of rape crimes committed during the war.
376. When Korean and Filipina women started speaking out about sexual slavery in the 1990s, the women of Mapanique decided they too should give voice to their victimisation by the Japanese military, and many survivors consequently joined the organisation for survivors of sexual violence, Malaya Lola (Free Grandmother). Their solidarity with the surviving “comfort women” and their quest for justice together with the importance of shedding historical light and ending impunity for other examples of sexual violence by Japanese military led to the inclusion of Count 3 in the Common Indictment, which we now address.

377. Thirty-one witnesses as to the Mapanique crimes gave video or affidavit testimony to the Tribunal, thus allowing the Judges the opportunity to obtain a detailed picture of the events of those days. Other evidence about the events in Mapanique was also entered into evidence. Official Japanese documents provided insight into the military background and purpose of the attack.
378. On November 23, 1944, beginning around dawn, the Japanese military began shelling in and around Mapanique, in Candaba, Pampanga, the Philippines. This was not the first Japanese raid in the area; prior raids had resulted in arrests, capture, and execution of some of the barrio's men. Maxima Regala de la Cruz testified that she saw many trucks lined up in the highway with their headlights on before the explosions started.
379. On October 11, 1944, General YAMASHITA, Commander of the 14<sup>th</sup> Area Army in the Philippines, promulgated the "Guiding Principles for Philippine Operations" in which he warned his troops of the danger of subversive activities against the Japanese. The Principles ordered that armed Filipino bands "be subjugated and pacified. These united activities must be destroyed."<sup>295</sup> On November 22, 1944, the 2nd Tank Divisional Commander, Iwanaka, a subordinate of YAMASHITA, issued an order to purge Mapanique of all "anti-Japanese Communist guerrillas through a punitive or subjugation mission."<sup>296</sup> The next day, 14<sup>th</sup> Area Army troops attacked Mapanique, committing murder, rape, torture, and pillage throughout the barrio. An estimated 100 women and girls were raped that day, and the evidence indicates that the murder of the men and torturous rape of the women of Mapanique had been planned, as the attack followed a familiar pattern.
380. Most witnesses stated that they heard the explosions initiating the attack. Some witnesses who heard the explosions identified them as bombs, cannon blasts and machine gun fire. Families hid in the fields or underneath their houses. Some remained in their houses. The Japanese soldiers entered people's houses, looted and deliberately destroyed their property.
381. The soldiers then herded men, women, and children to the school grounds. In some cases, the soldiers dragged women out of their houses to rape them, often killing or torturing men in the process. Leoncia de Guzman Guevarra, Mamerta Tolentino Sagum, and Cecilia Punzalan Sanguyo testified that Japanese soldiers raped them in or near their own houses. Mamerta Tolentino Sapum was raped in front of her baby. Leonora Hernandez Sumawang testified that although only 13, three Japanese soldiers raped her in a neighbour's house. One soldier used the tip of his bayonet to cut off her underwear, wounding her thigh. When the people arrived at the school grounds, the Japanese soldiers separated men from women and tied some of the men together and forced the people to remain under the hot sun without any food or water. They then proceeded to torture and brutalise the men.
382. Some witnesses testified to seeing their family or neighbours tortured or killed. Natalia Manimbo Alonzo saw her father hacked and beaten by a Japanese soldier, incurring wounds from which he later died. Maxima Regala de la Cruz witnessed her father's death from a bomb that exploded near him. Petronila Ocampo de la Cruz saw her brother and father dragged away, their wrists tied behind their backs, being hit repeatedly by the

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<sup>295</sup> Exhibit JJ-2.

<sup>296</sup> Exhibit KK.

Japanese soldiers, to the point that her father was covered with blood and she assumed he was already dead. Lucila Hernandez Payawal saw her sister and brother wounded by a bomb that exploded in the village chapel. Senaida Punzalan de la Cruz witnessed the torture of her uncles, who were tied together and hanging by their feet, to get them to admit they were guerrillas. They refused and kept asking for water to drink. She testified that, in response, a soldier then squeezed the liquid from carabao dung and forced her uncles to drink it. Fermina Bulaon de la Pena saw her brother Tomas Bulaon led out on the balcony with his hands tied and head bowed. She testified that, "the soldier raised his sword and stabbed my brother at the back." Florencia Macapagal de la Pena witnessed her brother being shot. Tarcila Mangulabnan Sampang was forced to witness the sexual torture of her father, who had been singled out because an informer had identified him as a guerrilla. She stated, "My father was separated from the other men in the village. He was the only one. They kept pummeling 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.

383. After the Japanese soldiers had tortured and killed many of the men, they took the bodies, along with the living men, into the schoolhouse and set it on fire. Many women saw their loved ones burned alive, including Petronila Ocampo de la Cruz, whose uncle, Pedro Ocampo, was among them, and Senaida Punzalan de la Cruz, who saw her paternal uncle Abad Punzalan being pushed into the classroom that was torched. One man, Henio Gonzales, was forced to throw his adult son on the fire and consequently had his own life spared. He was the cousin of witness Mamerta Tolentino Sagum.
384. After the initial expression of terror, intimidation, and outright murder during the attack, the Japanese soldiers marched the females of the village, particularly the girls and young women, toward the *Bahay na Pula* or Red House, which they had commandeered as a field depot. En route, they ordered many of the women to carry sacks of loot and go with them, forcing them to walk through the muddy fields. Some of the women were raped along the way. The soldiers prodded the women and girls to go faster with slaps on the buttocks and jabs of rifles and bayonets. Fermina Bulaon de la Pena testified that Japanese soldiers raped her and her companion on the way to the *Bahay na Pula*. The soldiers had forced them to carry a heavy load on a pole and then made it too heavy to move by pulling down on one end of it. When Fermina Bulaon de la Pena dropped the pole, the soldier became angry and both soldiers raped the girls. Rufina Quilantang Catacutan testified that three Japanese soldiers raped her on the way to the *Bahay na Pula*, and then two others raped her once she entered the house. One of them stabbed her with a bayonet when she resisted, and this left her too weak and terrified to resist further.
385. When the women arrived at the *Bahay na Pula*, they found that the soldiers had built tents around the house. Most women were gang raped by two or more soldiers acting together. Typically two or three ganged up on each victim where one would hold her down while another raped her, and then the others would take their turn. Many were raped in the presence of other women who were also being raped, and they heard each other's screams of pain and cries of terror. Some of the women were raped in front of family and friends. Many victims were girls who had not yet begun to menstruate.
386. Natalia Manimbo Alonzo, Esther de la Cruz Balingit, Guillerma Sombillo Balingit, Virginia Manalastas Bangit, Juanita Maniego Briones, Rosaria Culala Buco, Rosalina

Buco, Rufina Quilantang Catacutan, Maxima Regala de la Cruz, Victoria Manalili de la Cruz, Petronilla Ocampo de la Cruz, Maria de la Paz Balagtas Culala, Januaría Galang Garcia, Rufina Quaderna Gulapa, Teodora Marin Hernandez, Maria Reyes Pangilinan, Lucila Hernandez Payawal, Fermina Bulaon de la Pena, Florencia Macapagal de la Pena, Teofila Regala Punzalan, Belen Alonso Sagum, Tarcila Mangulabnan Sampang, Corazon Manlili Suba, and Caridad Lansangan Turla all testified that they were forced to go to the Bahay na Pula and that once there, they were subjected to sexual violence by Japanese soldiers. Senaida Punzalan de la Cruz and Mauricia de la Pena Domingo were also raped that day.

387. Natalia Manimbo Alonzo testified, "I was sexually molested from 12:00 noon until night time. I was in pain, shocked, and totally numbed when it was over." Esther de la Cruz Balingit testified that a soldier pushed her down on the grass and tied her legs. She said, "It was very difficult for me to move and I knew then that something terrible was about to happen to me." After the first soldier raped her, the soldier who had been standing guard raped her. Guillerma Sombillo Balingit testified, "I was so weak after they raped me that I could not stand, I stayed there until morning." Virginia Manalastas Bangit testified that she was with her niece and another girl. 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. Juanita Maniego Briones testified, "I could hear my aunt begging the Japanese soldier to spare me from being raped as I was only 12 years old and was not yet a full-blown woman." The plea was to no avail and the soldier continued his assault. She said, "I feared for my life and hoped that this man would stop hurting me. It was so painful I thought I would die."
388. Rosaria Culala Buco testified that three soldiers took turns in raping her. They kicked her when she fought back. She said, "After it was over, I could not sit or stand up. My body was too painful. I had to crawl to get through the door." Rosalina Buco testified that three soldiers paired up with her and two other women in the same room and raped them all. The one who grabbed her squeezed her neck to make her lose consciousness, after she fought back. He kept choking her neck while raping her. Maxima Regala de la Cruz testified that she and her mother were raped in the same room. Victoria Manalili de la Cruz testified, "I felt like there was no way I could survive the physical and mental ordeal I had been subjected to since early that morning."
389. Petronila Ocampo de la Cruz testified, "I fought him and told him I was a married woman and shouldn't be treated this way. I begged for mercy in Gods name. I asked him whether he recognised me as one of the caretakers of the house." When she resisted, one of the soldiers punched her arm, leaving her with a lasting injury. Maria de la Paz Balagtas Culala testified, "I did not want to go with the soldier but I could not resist because of the overwhelming fear. All the time that soldier was raping me, his gun was on the cot." Januaría Galang Garcia testified, "I tried to resist but he was much stronger. He punched me in the stomach a couple of times. Then, he raped me. After some time, he raped me again. Then he left." Rufina Quaderna Gulapa testified that two soldiers took her to a room, undressed her with a bayonet, and raped her. She said that one soldier "forced me to hold his penis. I was horrified. I could not hold it. He then inserted his penis inside my vagina. I felt a burning kind of pain inside me. I screamed. I must have passed out. I do not know how many times I was raped that night." Teodora Marin Hernandez testified, "My kicking and struggling irritated him so he slapped me several

times, then he raped me. I was so weak at this point all I could do was cry and I heard the other women in the room also crying.”

390. Maria Reyes Pangilinan testified that she had to leave her year-old child with her relative when soldiers forced her at gunpoint to go to the *Bahay na Pula*, where one raped her while the other held her down. She said, “I started praying and hoping that they will not kill me. I wanted to scream but no sound escaped my lungs. When the other soldier succeeded in pushing his penis inside my vagina, I just closed my eyes and struggled with the pain it caused me.” Lucila Hernandez Payawal testified, “All I could feel was fear.” Three soldiers raped her in succession. She said, “By this time I was quite hysterical. I was screaming and scratching the soldiers’ head and arms.” Florencia Macapagal de la Pena testified, “One Japanese soldier held both my hands as they undressed me. I kept fighting. Another came and punched me on the legs. It was Captain Hiwara who raped me. It was midnight when they were finished with me.”
391. Teofila Regala Punzalan testified, “Through gestures, he seemed to be asking me to choose between his penis or his rifle with a bayonet. Then he raped me. I was fourteen years old at the time.” Belen Alonso Sagum testified that two soldiers kept her with them for what appears to be about twenty-four-hours. Despite her plea that she was only a child, they each raped her three times. She said, “Every time I fought back they would threaten to kill me. I was only fourteen years old. The soldiers were calling me baby the whole time.” Tarcila Mangulabnan Sampang testified, “I was crying because I did not know anything about sex at my age. Before I could protest, I was kicked and lost consciousness. When I woke up, I was naked and already raped. I was made to stay in that tent for a night. I was punched in the stomach, made to have sex with them for a long time. There was no part of my body they did not touch.” Corazon Manalili Suba testified that she fought back and a Japanese soldier hit her in the stomach. She said, “I fainted. When I regained my consciousness, I felt pain. I had bruises all over my body. Then I saw blood in my private parts. That was how I knew they raped me.” Caridad Lansangan Turla was held in a room with three other girls her age. Four Japanese came in and raped them. She testified, “The Japanese forced me on the floor and pinned both my hands. I struggled and shouted for help but he was strong and I was just a child and very weak. He continuously slapped me on the face. Then he raped me. When he finished another Japanese came and raped me. By the second Japanese I could no longer struggle. I felt pain all over my body. I just lay on the floor helpless. After the four Japanese left the room all four of us stayed awake crying all night.”
392. The women and girls who were raped were left with terrifying memories and lasting physical scars and emotional pain. They did not have the opportunity to heal in safety, however, because of the wholesale destruction of their community.
393. In conclusion, the evidence shows that the Japanese military committed systematic and organised rapes, targeting young women and girls of the barrio of Mapanique. They rounded up community members in a central place (the schoolyard), separated women and children from the men, and brought the young women and girls to the *Bahay na Pula* to rape them. The rapes were an integral part of the mass attack on the community, which also included looting, arson, massacre of the men, and other forms of torture and abuse.

## I. CONTINUING HARM TO SURVIVORS OF RAPE AND SEXUAL SLAVERY

394. The Judges are impressed by the extraordinary strength and courage of all of the survivors of sexual violence in the face of the suffering they have endured. 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. As Tomasa Dioso Salinog stated, “The wounds they did to me are very deep. I thought I couldn’t bear it. But I had to bear it in order to survive.”
395. Overcoming enormous obstacles, the “comfort women” have given survival new meaning. Many of them raised children, even though the majority were subsequently unable to give birth themselves. They married widowers and raised stepchildren and some also adopted children. 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. They struggled to find contentment in marriage or to reconstruct their lives as single women in patriarchal societies that valued women according to their family role.
396. Eventually, these remarkably strong and courageous women spoke out publicly to bring an end to the long years of silence and shame. They found courage and inspiration in each other and this bravery encouraged others like themselves to come forward, creating networks of mutual support and giving expression to the unspeakable through their testimonies. The surviving former “comfort women” helped to bring about a worldwide movement for the condemnation of sexual violence against women in war.
397. At the same time, in the some fifty-six years since the war ended, the survivors of rape and sexual slavery have endured and struggled with terrifying and recurrent memories and 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.

### 1. *Enduring Health Damages and Physical Suffering*

398. Many witnesses testified that they still experience physical pain and have disabilities and scars as a direct result of beatings and torture and, of course, the sexual violence inflicted against them.
399. Wan Aihua testified that she suffers pain from having been tortured upon being recaptured after escape, including being hung from a tree by her arms. Kim Yong-Suk testified that she has aches in her legs from broken bones where the soldiers kicked her. Yuan Zhulin testified that she still has “terrible headaches” from being beaten on her head. Yang Mingzhen testified that her body is still badly injured as a result of the violent rapes she experienced when she was just a child.
400. Survivors experience disability from broken bones that never healed properly. Wan Aihua testified that the torture damaged and “bent” her bones and shortened her height. Ms. Kim testified that she cannot walk properly. Ms. Mardiyem testified that as a result of being kicked, she had abnormal bone growth and one leg is shorter than the other.



401. Two survivors mentioned digestive problems caused by torture. Kim Yong-Suk suffers from digestive problems as a result of being cut in her stomach area with a sword, and Kim Bok-Dong suffers from having water forced down her throat with a hose.
402. Two witnesses testified that they suffered hearing loss. Teng Kao Pao-Chu lost the hearing in her right ear from a cannon shot that exploded on the ship during her transport as a “comfort woman.” Rosalind Saw testified that she believes her deafness is a result of being slapped and having her hair pulled.
403. Chun Ok-Soon lost her ability to speak as a result of tattoos that were imprinted on her tongue; she also lost one eye as a result of violence.
404. Many survivors have scars on their bodies from the physical violence to which they were subjected. Leonora Hernandez Sumawang has a scar on her thigh from a bayonet wound. Yuan Zhulin and Tomasa Dioso Salinog have scars from being beaten. Mun Pil-Gi has scars under her arm from being burned. Kim Yong-Suk has many scars from sword cuts, especially on her breast and stomach area. She testified, “If you see my body, I’m full of scars.” Yang Mingzhen has a scar on her forehead from a sword. Jong Ok-Soon has tattoos on her stomach and breast in addition to her tongue.
405. The injuries inflicted on the survivors in their youth have been exacerbated by age. The stress and violence has impacted upon their health in ways that are largely incalculable and intangible.

## **2. *Reproductive Harms***

406. Reproductive harm occurred on numerous levels and it often depended upon the country as to whether abortion was induced or the pregnancy was carried to term, whether a woman who became pregnant as a result of rape was killed or released, given a break or forced to continue servicing soldiers. Little is known about the children born as a result of rape but it appears some of the women were able and willing to keep the child whereas others were not. Many lost the ability to bear children as a result of the damage caused to their bodies by the rapes and other violence.
407. The rate of infection with sexually transmitted diseases was high in the “comfort stations.” Two Indonesian survivors, Ms. Titih and Ms. Sukarlin, suffered from untreated syphilis until their advanced age. Medical records from a small group study at In-chun Sa-rang Hospital in Korea show five survivors suffering from late latent syphilis.
408. Survivors of sexual slavery suffered damage to their reproductive organs including loss of ability to bear children. Six survivors testified that they were unable to bear children, and three testified that they gave birth to children after their release from sexual slavery. Ms. X and Ms. Suhanah testified that they had had their uterus removed due to infection as a result of sexual violence. Pak Yong-Sim testified that she miscarried after being forced to continue providing sexual services during her pregnancy; Chong Sun Myong and Lee San Gyung lost their reproductive capacity as a result of torture.
409. Yuan Zhulin testified that injections she received as a “comfort woman” caused her to lose her reproductive capacity. Teng Kao Pao-Chu stated that she is unable to have children because of damage to her reproductive organs. Kim Bok-Dong also stated that she is unable to have children.

410. Other witnesses testified that they suffered miscarriages, including Ms. Mardiyem and Jan Ruff-O'Herne. Jan Ruff-O'Herne required a series of operations in order to be able to carry her children to term.
411. Sexually transmitted diseases could affect the women's children as well. One survivor testified that her child suffers with mental illness as a result of the syphilis she unwittingly transmitted to him.
412. Inability to bear children interfered with women's marital and family life. Kim Bok-Dong testified that her husband started to have frequent affairs because she could not have children. This led to their eventual separation. Ms. Suhanah testified, "I couldn't have child nor husband because my uterus [was] taken away." Many survivors married widowers and raised stepchildren, while others adopted children either with their spouses or to raise alone.

### 3. *Ongoing Psychological Harms*

413. Survivors of sexual violence experience severe psychological consequences as a direct result of the trauma and violence, which was exacerbated, particularly for the former "comfort women," by social isolation, societal stigma, economic hardship, marriage difficulties, and the failure of the state of Japan to recognize and repair its wrongs. These factors were also foreseeable consequences of the sexual violence and servitude.
414. Despondency led some survivors to contemplate suicide. Lin Shen-Chung (Iyang-Apay) stated that she considered suicide many times but refrained on account of her five children whom she raised alone. Teng Kao Pao-Chu testified that during an unsettled period of her life, she attempted suicide by taking pills. She stated, "I felt that my life was doomed." Rufina Quilantang Catacutan and Rosalina Buco both testified that they thought of suicide. Thoughts or attempts at suicide were common among the girls and women in the sexual slavery facilities. Some witnesses testified that they or others attempted suicide. Kim Bok-Dong and two other women tried to commit suicide after they endured their first rape.
415. Survivors also experienced nervous breakdowns and addictions due to the trauma they suffered. Pak Yong-Sim testified that she suffered a nervous breakdown. Song Shin-Do and Teng Kao Pao-Chu both testified that they had drinking problems. Teng Kao Pao-Chu stated that she was able to quit drinking only when it was necessary to win the respect of her children. A study at In-chun Sa-rang Hospital showed that a large number of former "comfort women" smoked and had smoking-related illnesses due to the stress. Some became addicted to painkillers.
416. Survivors testified that the past will not let them rest and that they desire peace. Belen Alonso Sagum stated, "I have not found peace and shall not find peace until the Japanese government recognises the wrong it has done and compensates the people whom they have done wrong." Rosario Culala Buco testified, "I still experience depression and anger." Maria de le Paz Balagtas Culala stated, "I want some peace from the past." Ms. Mardiyem stated, "I was forced for three years without any opportunity to rest, ten hours a day, and right now I really want to be able to live my life."
417. Survivors testified that they still experience strong anger towards the perpetrators and the Japanese government. Lin Shen-Chung (Iyang-Apay) testified that a former perpetrator came back and apologised, and also asked if she still hated them. She stated, "Although I

told him I did not hate them, I had to suppress all the sufferings in my heart when I spoke.” Teodora Marin Hernandez testified that she still feels animosity when she sees Japanese men. Wan Aihua testified, “I am angry that my body was injured so badly.” Kim Yong-Suk testified, “He hurt me all over my body and I hate Japanese soldiers. I could never forgive them.”

418. Teng Kao Pao-Chu stated that she was angry that the Japanese government took non-Japanese women, and that they have not admitted the truth. She stated, “All my youth has been ruined like this! This is not to be endured.”
419. The Survivors continue to deal with terror, pain, and grief caused by the crimes committed against them. Yang Mingzhen testified, “I am still terrified when I remember all these things.” Wan Aihua said that it was hard to put her experiences into words. She stated, “I am just filled with sorrow.” Two witnesses testified that they had flashbacks in which they felt they were reliving the painful experiences. One of those witnesses, Guillerma Sombillo Banlingit, testified, “During those times, I just cry and feel helpless.”
420. Several witnesses testified that they suffer from nightmares and anxiety. Song Shin-Do testified, “The battleground scenes never left my dreams.” Jan Ruff-O’Herne testified that she has had nightmares and sleepless nights ever since her period of sexual slavery. Leonora Sumawang testified, “I still wake up from nightmares of Japanese soldiers.” Rufina Quaderna Gulapa stated, “I have nightmares of a Japanese soldier wearing a cap with flaps on the ears, with his trousers down around his ankles, forcing himself inside me.”
421. Many witnesses testified that they feel a pervasive sense of shame, even though the events were beyond their control. Rosalina Buco testified, “I could not stand the humiliation and the loss of respect for myself.” Tomasa Dioso Salinog testified, “I was so humiliated and I see myself as no more than a pig in a pen.” Jan Ruff-O’Herne testified, “We felt dirty. We felt soiled. We had this enormous shame.” Because of this shame, she stated, “for us, the war was not over.” Maxima Regala de la Cruz testified, “I felt shame because I felt dirty and used.” Ms. Suhanah testified that on visiting the site of the former “comfort station,” “I always cry and feel ashamed.” Teng Kao Pao-Chu stated: “I lost my life. I was regarded as a dirty woman.”
422. Maxima Regala de la Cruz stated also that having no recourse against the perpetrators increased their silence and shame. She stated, “It is so shameful that what we did with our history and pain is dig a deep hole and cover it since justice continues to elude us.”
423. Shame caused women severe distress and social isolation. One witness, Corazon Manalili Suba, stated that shame caused her to stop attending school. Teng Kao Pao-Chu and Senaida Punzalan de la Cruz testified that feeling ashamed of the experience of sexual violence made them avoid marriage. Rosalina Buco stated, “Had I been the lone rape victim on that dark day, I know that I would have, without a doubt, taken my life out of utter shame.”
424. Ms. Mardiyem lost the dream of becoming an actress. Other witnesses testified that they lost their youth. Jan Ruff-O’Herne had wanted to become a nun. Virtually all lost educational opportunities, job opportunities, and promises of normal and family life as a direct result of being repeatedly raped.

#### 4. *Impediments to Intimate Relationships and Social/Community Life*

425. In the post-war period, marriage and family were the predominant roles to which women could aspire and this familial role defined their lives and future security. In addition, romance, love, and the satisfaction of raising children were important to many women. However, because the ideology of women's chastity was promoted in many countries including in the Asia-Pacific region, survivors of sexual violence often had a difficult time finding marriage partners, and also suffered a high percentage of divorce and abandonment for reasons directly related to the sex crimes they endured. This was especially true for survivors of sexual slavery, for many of whom there were additional sources of marital problems stemming from the view that they were "spoiled," from the accusation that they had been prostitutes and from their inability to bear children and to enjoy sexual relations.
426. The women who were involved in relationships when they were procured were rarely able to sustain the relationship upon their return. Teng Kao Pao-Chu testified that she had a boyfriend when she was ordered to go abroad as a "comfort woman," and that although he promised to wait for her, he had married by the time she returned. Unable to be with the one she loved, she chose to avoid marriage for many years and later only married for economic security.
427. Some witnesses testified that they shunned relationships for fear that potential marriage partners would reject them. For many, it became reality that partners or potential partners rejected survivors of sexual violence. Rosario Culala Buco testified that suitors rejected her because she had been raped by Japanese soldiers and was not a virgin. Lu Mang-Mei testified that she was unable to marry until the age of 38, when intermediaries helped to arrange a marriage for her with a man who would not suspect her past which she had to hide and lie about. Teng Kao Pao-Chu stated that many former "comfort women" could not find marriage partners.
428. Some witnesses testified that their choice of marriage partners was limited due to their past. Ha Sang-Suk and Teng Kao Pao-Chu married widowers with children.
429. Many witnesses testified that, although they eventually married, their marriages ended in abuse and divorce. Lin Shen-Chung (Iyang-Apay) stated, "Of the history of my four marriages and three divorces, my husband's difficulty to accept my past usually is the main reason for my divorce." Her first husband divorced her when he learned the truth; at the time she was three months pregnant. Her second husband took their three children and left her when he learned of her past. Her fourth husband had known of her past before the marriage, but found fault with her later and tried to extort money from her to obtain a divorce. Only her third husband, who died in 1971, was kind to her.
430. Belen Alonso Sagum testified that she initially had not told her husband of her past; when he found out he began to get drunk and verbally abuse her, saying "Better to have a leftover dog than a leftover person."
431. Lu Mang-Mei testified that her husband started to have affairs when he found out the truth. Ms. X testified that, although her husband accepted the fact that she was not a virgin, she had not told him the reason. She testified that they were happy with their two adopted daughters, and that he had taught her to read, but her inability to enjoy sexual relations eventually led him to find another woman and abandon his family. Kim Bok-

Dong's first marriage ended in separation when he had affairs in response to her inability to bear children.

432. Other witnesses rejected marriage themselves after the trauma. Tomasa Dioso Salinog testified that she never wanted to marry, fearing that a husband would abuse her. She stated, "I feel like everything will happen again. If I marry, and my husband will hurt me, what will I do?" Tarcila Mangulabnan Sampang stated, "I never married because I was raped by the Japanese."
433. Song Shin-Do, who had hated marriage and was deceived into becoming a "comfort woman" with the promise that she could make a living while remaining unmarried, formed a platonic relationship with the man who helped her after the war and lived with him until his death.
434. Many married only reluctantly. Kim Bok-Dong married in response to her mother's wishes. Teng Kao Pao-Chu married for security after living a hard life working in nightclubs for many years. Teng Kao Pao-Chu testified that when she did marry, she was unhappy and led a hard life, raising her husband's nine children, cooking for him and taking care of his business.
435. Witnesses testified repeatedly that they suffered from community defamation and rejection. The combination of chastity ideology, moral condemnation of prostitution, and nationalistic rejection of anyone supposed to have been associated with the Japanese resulted in complete isolation for many of the women in many countries.
436. Japan's repeated insistence that the "comfort women" were voluntary prostitutes instead of victims of military force and coercion exacerbated their suffering, by feeding false impressions of survivors throughout the Asia-Pacific region. That the Japanese assertion was believed also demonstrates the strength of misogyny and the misconceptions and stereotypes surrounding crimes of sexual violence.
437. Jan Ruff-O'Herne testified that in the internment camp after the war, other women called the survivors "Japanese whores" thinking they had gone voluntarily in order to get better food. Lu Mang-Mei stated that people defamed her because she had worked as a "comfort woman" on Hainan Island. Teng Kao Pao-Chu testified that people regarded her as a "dirty woman." She also stated that some but not all people looked down on the former "comfort women," and it was commonly thought that they would not be happy with the life of a housewife.
438. Tomasa Dioso Salinog and Ms. Mardiyem both testified that people referred to them as "leftovers of the Japanese" and treated them as outcasts. Similarly Ms. Emi was called a "bread crumb of Japan" and villagers burned her house down.
439. Ms. X testified that immediately after her return home, she had to move to another place because of the reaction of her village. She stated that villagers despised the "comfort women" because many Malaysians had been killed by the Japanese.
440. Some survivors led an unsettled life. Teng Kao Pao-Chu stated that, after staying with her sister for a few years immediately upon her return, she left her sister "to wander around." She described this as a period of her life during which she worked in nightclubs, and lived in a rented house. She was deprived of having children since she could no longer give birth and was also no longer close to her adopted daughter because of the long

separation. It was during this period that she attempted suicide. From her testimony, it appears that the rootless lifestyle and deprivation of close family relationships was the cause of her despondency. Kim Gun-Ja also testified that she wandered for a while, going from city to city as a servant and peddler.

441. Several survivors of sexual slavery testified that they lost the ability to take pleasure in sexual relations. As Jan Ruff-O'Herne stated, "How can you enjoy lovemaking, even by your husband, if you are reminded of all the hundreds of times you were forcibly raped by the Japanese?" She stated that she felt fortunate that her husband is very patient. Ms. Mardiyem and Ms. X testified that they had no pleasure in sexual relations with their husbands. As discussed above, Ms. X's marriage ended because she refused to engage in sexual relations. Rosalind Saw testified that after her experiences, she was afraid to make love with men because of the pain.
442. As discussed above, many survivors of sexual slavery testified that they were unable to have children. In addition to the physical deprivation of reproductive capacity, some had chosen not to marry or were unable to marry or form sexual relationships with men. Survivors had also been separated from their children whom they had been forced to leave behind. Some of their children died while they were in the "comfort station." Teng Kao Pao-Chu had left behind her adopted daughter and was unable to be close to her when she returned nine years later. Song Shin-Do had been forced to leave her newborn children with strangers when she gave birth during the time she was a "comfort woman." She testified that she continued to suffer guilt over having left her children in China.

### 5. *Silence*

443. Most of the Survivors of sexual slavery and mass rape kept silent about their experiences until the 1990s, when they began to break the silence. Even now, however, there are many former "comfort women" who are unable to speak out. For some women, this meant hiding their past. For others, it meant living alone with their pain.
444. Although some witnesses were able to disclose their history of sexual violence to their husbands, other witnesses testified that they never did so. Maxima Regala de la Cruz stated that she did not tell her husband until she decided to speak out publicly in the 1990s. Several of the Mapanique survivors, including Juanita Maniego Briones, Fermina Bulaon de la Pena, Florencia Macapagal de la Pena, Caridad Lansangan Turla, and Belen Alonso Sagum also testified that they did not tell their husbands. Teofila Regala Punzalan testified that she only told her husband after they had six children. Fermina Bulaon de la Pena testified that she was afraid her husband would leave if she told him about the sex crimes committed against her. Ms. X did not tell her husband that she was a survivor of sexual violence, only that she was not a virgin. Lu Mang-Mei and Lin Shen-Chung (Iyang-Apay) also did not reveal their pasts to their husbands. As discussed above, some of these women's husbands abused or abandoned them when they discovered the truth.
445. For most former "comfort women," their family members were unable to cope with the truth. Both the family members and the women themselves suffered from this. Jan Ruff-O'Herne testified that she only spoke with her mother once about what she had suffered as a "comfort woman," and that because her mother could not cope with what she heard, they never spoke about it again. Kim Bok-Dong testified that at first she told her mother only that she had been a nurse, and that her mother had a heart attack when she finally

told her mother the truth in response to her mother's urging for her to marry. Florencia Macapagal de la Pena testified that, upon learning that she had been raped, her father became very angry and disappeared because he could not control himself.

446. Some women never told their families. Ms. Mardiyem testified that neither her family nor her husband's family knew, although she had told her husband. Caridad Lansangan Turla testified that she never told her family until she spoke out publicly; at the time, after the rapes and massacres, they were only concerned whether everyone was alive.

## **6. *Poverty and Social/Economic Hardship***

447. Many survivors of sexual slavery testified that they lived in poor economic conditions and experienced great hardship in supporting themselves and their families. Most of these survivors were women who chose to remain single after returning home or whose husbands abandoned them. Ms. X testified that after her husband left her and their two daughters, she worked despite her many illnesses, as a launderer, hawker and maid; however, she could not earn enough to support her family and her eldest daughter had to leave primary school after two years. Lin Shen-Chung (Iyang-Apay), who was repeatedly left to raise her children alone, despite making four attempts at marriage, testified that she had a hard life raising crops as a member of her tribe. Tomasa Dioso Salinog, who chose to remain single out of fear that a husband would abuse her, worked as a launderer and seamstress and ran a shop, but never earned more than a very small income.
448. Other witnesses testified that they earned their living performing domestic labour or working in other occupations in which they had a marginal social status. Song Shin-Do testified that she worked for a Korean-Japanese man after she had been left alone in Japan. Kim Gun-Ja testified that she worked as a peddler and servant. Lu Mang-Mei and Teng Kao Pao-Chu both testified that in the later periods of their lives, they worked at domestic labour; Lu Mang-Mei, as a babysitter and laundress, and Teng Kao Pao-Chu, as a cook and laundress. Teng Kao Pao-Chu had worked earlier in bars and as a dancer in nightclubs, and even while she was married she led a hard life working for her husband.
449. Some witnesses testified that defamation by their communities had interfered with their ability to earn their living. Ms. Mardiyem stated that after she spoke out publicly about her experiences, people boycotted the catering business that she managed. Teng Kao Pao-Chu stated that her job opportunities were limited because people considered her a "dirty woman."
450. 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.
451. The witnesses all made the decision to break the public silence that had surrounded them for over fifty years. Many of them spoke about the power of speaking out, and the strength they drew from hearing other women who had done so and suffer similar atrocities.
452. The section below confirms the testimony of survivors as to the impact of sexual violence on their lives at the time the crime is committed and often for the remainder of their lives. It also underscores further the continuing harms resulting from impunity for the crimes.

**J. THE EXPERT TESTIMONY REGARDING THE IMPACT OF SEXUAL SLAVERY**

453. The Prosecutors presented the testimony of Lepa Mladjenovic, a psychologist and expert on sexual violence against women in armed conflict, about the harm experienced by survivors of such violence, and what helps them recover. She testified that it is usual for survivors to go through three stages of harm after the violence is over. The first stage is characterised by numbness and shock, where the survivor cannot believe what happened. The second stage involves emotional outbursts, flashbacks, strong feelings of shame, guilt, fear, and low self-esteem. The survivor also has a changed body image and may experience depression, thoughts of suicide, and loss of trust in the outside world. She may also have difficulty concentrating and problems with recent memory. In addition, she may be isolated from people because she has lost trust in others. She may decide not to marry or develop intimate relationships or she may be rejected by her community. The third stage may last for the remainder of their lives. A woman may consider suicide all the time to defend against the psychological pain. She cannot forget the trauma. She might recover her relationship with her body, or might feel that her body is foreign to her. Symptoms of the other stages may always recur. Women who have given birth to children as a result of the rape suffer particularly extreme emotional conflict.
454. Lepa Mladjenovic testified that trauma due to sexual violence during armed conflict is particularly intensified, for the following reasons. Rape in wartime may take place in public places, army barracks, and in front of the community. It is often committed by men in uniform. Victims are often raped multiple times by one man or several. It is also common that men rape groups of women. Rape using foreign objects, such as knives, sticks, bottles, glass and cigarettes, is also more common in war. It is common that the men inform the women that they are treating the women's bodies as the territory of the enemy nation which they want to defeat. The constant presence of death and suffering adds significantly to the trauma, as many women have witnessed the killing of family members and endured the demolition of their homes, poverty and hunger. Women experience the constant fear of death as well as the fear of being raped.
455. Lepa Mladjenovic stated that social justice is an important part of recovery for survivors of sexual violence in armed conflict, along with the support of family and community, and psychological counselling. She stated that trauma is not the private matter of a woman, but a political issue. When the state takes responsibility for the sexual violence, it can contribute to the survivor's recovery, and conversely, when it refuses to take responsibility for the crimes, it can impede the survivor's recovery.
456. The Korean Prosecutors presented in writing three expert testimonies. The first, by Lee, Sooyun (Ph.D. candidate, Medical Sociology Department of Seoul National University), discusses the immediate and long-lasting physical harm to survivors of sexual slavery, as found by a study of fourteen women. Seven of the fourteen women suffered lasting effects of beatings and other trauma, such as scars, neglected shoulder joint dislocation, amputation, and hearing disturbance. Another study showed that 35.9% of sexual slavery survivors tested positive for syphilis. This is a very high statistic for Korea, where the national average ranges from 0.3% for blood donors, to 9-15% for high-risk sexually active people. Many women became sterile. Lee quotes survivor Hwang Kum-Ju, who says that sterility resulted from repeated scrapings of the womb after women took Shot 606 while pregnant, which caused them to hemorrhage.



457. The fourteen survivors in the study were also tested for post-traumatic stress disorder (PTSD), a psychological response to trauma, with eleven testing positive. Among the findings were: the women were intimidated by the threat of death and experienced helplessness and fear during the period of sexual slavery; they feared and avoided men and stopped anticipating marriage; they mentally blocked much of their past; they spent many sleepless nights and experienced physical anxiety when they saw men or soldiers. These symptoms were repeated continuously for decades and interfered with the women's social and occupational lives. A high proportion of survivors smoked and suffered from many tobacco-related diseases including pulmonary diseases as well as heart attacks. They had started smoking during or after their ordeal.
458. The second expert testimony from Korea is by Lee, Chulwon (Director, Imam Counseling Center), who studied the psychological consequences to fourteen survivors. Lee found several general patterns. Survivors had maintained their daily life with painful effort although they had experienced severe depression, pessimism, instability, and lack of energy. They suffered from many physical symptoms related to their experience of neglect and abuse in sexual slavery. Those symptoms included headache, migraine, back pain, ulcer, hypertension, and rheumatism. Survivors had negative attitudes in interpersonal relationships, which often interfered with their intimate relationships. Survivors of sexual violence also had difficulty testing reality, which usually lead to further difficulty in dealing with daily life. Lee found that these women had greater suffering than other aged people as a result of their trauma. Lee suggests further that survivors be compensated for psychological distress, loss of financial opportunities, psychotherapy, and treatment for physical diseases.
459. The third expert testimony is by Young-Hee Shim, from the Department of Sociology at Hanyang University. Young-Hee Shim studied both the causes and the effects of the women's long silence and social isolation. She identifies living conditions, cultural factors, and language and identity factors as reasons for the women's silence. Young-Hee Shim found that a component of the trauma was coming back to ordinary life after a sort of moratorium, in which familiar social ethics and value judgements were temporarily suspended. When the victim survivors realised they were going back to previous lives and relationships, they probably felt fear and anxiety, since they had to be conscious of the eyes of people around them. Many women could not or did not go back to their hometowns, and thus had no opportunity to tell their stories since they were cut off from previous relationships. Furthermore, the burdens of daily living after the war consumed the women's attention. Korea did not have a sufficient infrastructure after the emancipation from Japanese rule, so financial support or counselling for victims would have been unavailable. The Korean War from 1950-1953 caused additional devastation, deaths, and trauma to those living in the territory.
460. Anti-Japanese sentiment and chastity ideology also contributed to silencing the women. Some faced community or family pressure not to tell their story. They also feared being accused of cooperating with the Japanese.
461. Furthermore, because of obfuscation regarding men's sexual violence towards women, the women might have had difficulty defining to themselves what had happened. They might not have been sure whether it was rape or prostitution or something else, and did not have the words to describe their experiences. Young-Hee Shim notes that survivors of sexual harassment and wife battering also had no way to name their victimization before those words were found.

462. Colonial and gender domination may have contributed to women's confusion. Sometimes they might have thought they were Korean victims of Japanese colonial rule, but other times, due to Japanese indoctrination, they might have thought they were Japanese patriots serving the Japanese Imperial Army. Young-Hee Shim attributes the outpouring of stories to the development of feminist discourse by the Korean Council for Women Drafted into Military Sexual Slavery by Japan and women's studies.
463. Young-Hee Shim, like Lepa Mladjenovic, emphasises the importance of social justice for survivors. However, Young-Hee Shim focuses on the power of truth of the women's stories to restore collective memory and compel the rewriting of history. She also notes that for many survivors, discussing their stories solved some of the pains of their trauma.
464. The Judges accept the opinions of the experts as persuasive. The testimony regarding the impact of the sexual slavery on the lives of the survivors and regarding the contributing or mitigating factors and continuing harms will also be taken into consideration for the issue of state responsibility and reparations, discussed in later sections.

#### **K. DEMANDS FOR REPARATIONS**

465. The Judges consider that it is important to listen to the requests of the survivors themselves. Witnesses made powerful demands for reparations to this Tribunal, including the demand for an apology and compensation by the state of Japan, the demand that the perpetrators be held accountable for the crimes, and that the truth of their experiences be told and incorporated as part of the history to prevent recurrence.
466. Kim Yong-Suk of Korea stated, "I didn't come here for pity, I didn't come here for money. I want you to know that I lost my life, my youth, and unless a Japanese government official comes in front of me and apologises, I will never forgive them." Wan Aihua of China stated, "I came to Japan because I have a lot of things to say to the Japanese Emperor and to the Japanese government because perpetrators are still living. They did terrible things to us. They have to make apology to us and they have to make compensations. My body is injured so badly I am angry about it. I have a very strong anger toward Japan."
467. Yuan Zhu-lin of China testified, "I would like to once again prosecute the Japanese military. They damaged my body and I cannot be productive any more and I would like to have the Japanese government apologise and also pay reparations. I am an old woman and I don't know how long I will live but I will not give up until I win my victory."
468. Tomasa Dioso Salinog of the Philippines stated, "The wounds they did to me is very deep . . . I am asking for justice. I am asking for justice." Maxima Regala de la Cruz of the Philippines stated, "The women in our barrio who were raped by Japanese soldiers have the right to demand for justice and financial compensation."
469. Many of the witnesses expressed interest in receiving apologies from the direct perpetrators. Virginia Manalastas Bangit of the Philippines stated, "We want the Japanese government to acknowledge what it did to us, and to pay for the suffering they forced us to go through. The soldiers who raped me must have been about my age during the war, and they could still be alive today. They should apologise to us and make reparation."

470. In the Philippines, many of the survivors of the “comfort stations” and Mapanique testified that they joined the Malaya Lola group (an organisation of WWII sexual slavery survivors) to demand compensation out of a desire for justice. Rosaria Culala Buco of the Philippines stated,

I joined [the Malaya Lola group] because of the difficulty I went through. I am now showing my shame to the whole Philippines and to the whole world so that the Japanese government will have the conscience to compensate its victims. They should compensate us for the houses they burned, the things they have stolen from us and for taking away the dignity of its rape victims.

471. Fermina Bulaon de la Pena stated, “I joined the Malaya Lolas to seek justice from the government of Japan for the violence they have committed against me. I seek indemnification for damages against my person and property.” Florencia Macapagal de la Pena states, “My purpose for joining [Malaya Lola] is to seek justice for what happened to us. I want the Japanese to understand the pain they inflicted on us. Whoever owes must pay.” Leonora Hernandez Sumawang, a Mapanique survivor stated that she joined the group “to demand for justice from the government of Japan. No amount of money can compensate for the assault against my dignity as a person, as a woman, so first and foremost I demand that the perpetrators and whoever else is responsible to make an apology. Secondly, I want the world to know about our experience so that the lesson will be learned and that our experience at the hands of those soldiers will never be repeated. Third, I demand for just compensation for the damages suffered by my person and my property. My family and I have lost too much. Our lives were taken away from us in just one day.”
472. Another common demand was that the truth be revealed. Lu Mang-Mei of Taiwan stated, “the younger generations in Japan do not know much about our sufferings. People know nothing about the truth, since the data was all burned. What is the use?” Ahn Buk-Soon of Korea stated that “these perpetrators should own up and disclose the truth” and further: “And we have to correct the situation when they say that nothing of the sort happened. It really happened.” Teng Kao Pao-Chu of Taiwan stated,

I am very angry with the Japanese. They said they did it for their country. But for whom did we do it? For the Japanese? They took us by deception, and called us Chinks, which is most painful. Why didn't they recruit their own Japanese women, but recruited us! And the Japanese pretend that they know nothing, and we had to file our own lawsuit by ourselves! All my youth has been ruined like this! This is not to be endured! A lot of people knew that we have been there, nobody wanted us, and everyone all looked down upon us. Because I have sent money back to Taiwan, and my family did not receive them, I want the money back, and ask for an open apology from the Japanese government.

473. Lin Shen-Chung (Iyang-Apay) of Taiwan testified, “The past was very traumatic for my life. . . . When I think of the past, I feel very painful in my heart. Now that I am old and frail, what can I do? Only the Taiwanese government has been helping us. Where is the Japanese government? I ask for an apology and compensation from the Japanese government.”

474. Some witnesses mentioned their desire to ensure that these crimes are not repeated in the future, and their identification with other victims of rape and sexual violence in war. Jan Ruff-O'Herne of the Netherlands stated, "It took us fifty years. We couldn't talk about it, and then first the Korean comfort women spoke out and I saw them on television. Also in Bosnia, women were being raped again, and I thought this is something that didn't just happen fifty years ago. It happens again in war." Ms. Mardiyem of Indonesia testified that she wanted the younger generation to understand so that the crimes won't be repeated. Teng Kao Pao-Chu stated: "The next generation of Japanese people must know my suffering – that their parents did such bad things."
475. The survivor-witnesses also expressed a keen need to be heard and to be believed. This is reflected in the eloquent words of an East Timorese witness as to why she travelled to Japan to testify before the Tribunal: "We came all the way from our nation to this place to ask them if they could be responsible for what they did to us, for what they have taken from us. We were treated so bad. So now we are requesting for responsibility, for compensation. We came here for justice. We didn't come here to see Japan. We came here to tell the truth. We are not telling lies here."

### PART III – APPLICABLE LAW

#### A. PRELIMINARY LEGAL ISSUES

476. In the sections below, we first consider the principles of criminal law essential to understanding the nature and fairness of this proceeding, namely non-retroactivity, due process, statute of limitations, double jeopardy, and head of state immunity. We then consider the substantive crimes of rape and sexual slavery as crimes against humanity, and the applicable concepts of criminal responsibility analysing the law as it existed at the time the crimes charged in the Common Indictment were committed.

##### 1. *Principles of Criminal Law*

###### (a) *The Principle of Legality: Nullum Crimen Sine Lege*

477. 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. The underlying concept of *nullum crimen sine lege* – no crime without law – serves as a core principle of legal systems worldwide.

478. As noted previously, this Tribunal sits as if it were an extension or reopening of the proceedings before the IMTFE as a result of the IMTFE's failure to consider the system of sexual slavery established and maintained by the Japanese government and military. In order to avoid violating the principle of *nullum crimen sine lege*, the Judges will adjudicate the criminal responsibility of the accused in accordance with the law as it existed at the time the acts occurred.

479. The Preamble to the Charter of the Tribunal is consistent with this principle in calling upon the Tribunal "to render its judgements respecting responsibility for commission of crimes against women in light of the principles of law, human conscience, humanity and gender justice that were an integral part of international law at the time and that should have been applied by the International Military Tribunal for the Far East."<sup>297</sup> In determining criminal culpability of individual accused, particular weight will be given to the antecedents to and decisions of the post-World War II Tribunals. We will refer to more recent legal developments for the purpose of confirming or explaining earlier interpretations of the law but, in conformity with the principle of legality, we will not apply them to adjudicate the crimes when they represent a more recent or progressive evolution in the law.

480. The Tribunal must examine whether the conduct charged – namely, rape and sexual slavery as crimes against humanity – constituted a crime for which the accused could have been tried in 1946 by the IMTFE and incurred criminal responsibility as an individual or superior for that conduct.

481. It is also necessary to examine state responsibility to determine whether the crimes can be attributable to Japan and, if so, to determine the appropriate remedies. In gauging state responsibility of the government of Japan, it is appropriate to apply evolving legal norms to continuing violations. Hence, where the failure to prosecute wrongdoers and to repair the injuries inflicted causes ongoing and progressive harm to the survivors and their families and to heirs of those who have not survived, the violation is a continuing one and

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<sup>297</sup> Charter, Preamble, para. 14.

the Tribunal can apply the most recent developments of international law to determine the scope of state responsibility and to ascertain the most appropriate remedy.

(b) *Due Process*

482. The Tribunal considers the argument that adjudicating the charges against the accused *in absentia* constitutes a violation of their due process rights. The right of accused persons to defend themselves in criminal proceedings is essential and one of the bulwarks of freedom. It flows from the principle that individuals shall not be deprived of life, liberty, or property except through due process of law and in accordance with fair procedures which permit them to defend themselves through all appropriate legal measures.
483. The Judges note that due process constitutes an obligation of the state and of those that wield legal authority; members of civil society have no legal powers and thus no correlative legal duty to provide due process to those they accuse. Nonetheless, given the judicial form of this civil society initiative, the Judges examine to what degree it is desirable and feasible for this Peoples' Tribunal to afford due process measures.
484. The extent of due process rights is contingent on the potential prejudice to the individual whose rights are affected. This is a Peoples' Tribunal that has no power to impose any criminal sanctions or civil penalties on the accused, nor any power to compel testimony or production of evidence. It cannot punish the accused, all of whom are deceased,<sup>298</sup> nor does it have any power to force the accused, their 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, and make recommendations to encourage or influence the state of Japan to provide appropriate remedies. The Tribunal has no legal or binding power to enforce any determinations rendered in this Judgement.
485. The Tribunal's Judgement does, however, carry significant moral force. It can serve to expose the acts or omissions of the accused to the court of public opinion and thereby, at least, subject the accused to shame.<sup>299</sup> In this way, the Tribunal is similar to the work of scholars and historians, case studies, human rights reports, symposiums, documentary films and other civil society initiatives that publicise historical facts in the absence of any official judicial or legal process. Such indirect prejudice to the reputation of accused as may arise from this civil society initiative does not warrant recognising the same due process rights as should be afforded during an official or even unofficial criminal proceeding affecting solely reputation. Here, those who wish to represent the accused have the right to contest their responsibility before the public, just as the prosecutors, survivors, and experts have the right to assert and attempt to prove their guilt.
486. In sum, the Judges find that no due process rights of the accused have been violated by proceeding in their absence or, since they are deceased, in the absence of their representatives. The time and resources available to this Tribunal placed severe time limitations on the prosecution teams, and the state of Japan was offered a limited but,

<sup>298</sup> The following accused in this Tribunal received death sentences by the IMTFE: ITAGAKI Seichiro, MATSUI Iwane, and TOJO Hideki; HATA Shunroku and UMEZU Yoshijiro were sentenced to imprisonment for life. YAMASHITA was tried in a US Military Court and sentenced to death. Each of these trials and convictions was for crimes separate than for what they are accused of in the Peoples' Tribunal.

<sup>299</sup> See, e.g. Takuya Asakura, Nonbinding Tribunal Can Only Sentence the Nation to Shame, Japan Times, December 9, 2000, p. 2.

under the circumstances, reasonable amount of time to register its contest to the proceedings on its own behalf and on behalf of the individuals accused. Regrettably, Japan made no response.

487. Nonetheless, in an effort to consider the potential defence positions of the accused and the state of Japan, the Judges invited *amicus curiae* or “friend of the court” submissions to bring before this Tribunal the anticipated arguments of the defence. The Judges have also identified additional potential arguments from records available to us. We deem it important to consider the arguments of the accused and the state of Japan, not because due process compels it, but because it lends balance to our consideration of the issues and affects the force and accuracy of the Judgement.
488. Japan might further argue as a due process matter that too much time has passed since the occurrence of the crimes charged to make fair proceedings possible. However, this argument is without merit. As with the exposure of criminal conduct many years after the occurrence of the crime, and sometimes even after the alleged perpetrator has died, it is both lawful and constructive to determine responsibility for criminal activity. Indeed, in this process, more due process consideration is afforded to the accused than would likely be present in, for example, a historical text or a news report exposing the crimes and naming the perpetrators.
489. The Judges recognise that in some respects, the IMTFE procedures were inadequate and would not satisfy current international due process standards, although, at the time, the procedures utilised there were far better than the customary practice of summarily executing defeated foes considered responsible for wartime atrocities. While it is appropriate in this proceeding, based as it is on 1945 law, to adopt the findings of the IMTFE - and, beyond that, we find them warranted by the evidence there presented - we nonetheless caution against seeing the previous post-war military trials or this Tribunal as a legitimisation of proposals to evade due process requirements by utilising military tribunals equipped with power to consider secret evidence, conduct secret proceedings, or lower the beyond reasonable doubt threshold. The progress of the world community in recognising fundamental guarantees of due process as an essential part of the rule of law must not be sacrificed.
490. Finally, the Judges consider that had the Allied powers included charges covering the system of sexual slavery or the rapes at Mananique in the original indictment before the IMTFE, that Tribunal would have afforded greater due process to the accused than here. Undoubtedly, bringing the appropriate charges for these crimes in 1946 would have made more thorough fact-finding possible, notwithstanding the destruction of documents by Japan. Not only is it likely that the prior Tribunal would have had greater access to information from the Allied prosecution and from survivors or other witnesses than is available to us now some 55-65 years later, but the accused would also have had an opportunity to respond and to present their defences. But as the charges were not formally brought before the IMTFE, the responsibility now falls to this Tribunal to adjudicate them. This it strives to do despite the obstacles that delay imposes upon both the prosecution and the defence.

(c) *Statute of Limitations*

491. The state of Japan has contended that all judicial initiatives concerning the activities of the Japanese military during World War II are now time-barred by a statute of limitations.

This argument has been put forward by the Japanese government in other contexts to support its position that it has no legal obligation to pay reparations to the victims. It must also be considered whether the charges in the Common Indictment against the accused can be adjudicated or whether it is too late to bring a claim.

492. With regard to criminal culpability of the accused, a statute of limitations is a non-issue considering that this Tribunal functions as if it were sitting in 1946. Further, Article 6 of the Charter stipulates: “The crimes within the jurisdiction of the Tribunal shall not be subject to any statute of limitations.” This provision is consistent with international law. The egregiousness of such offences, which threaten the peace and security of humankind,<sup>300</sup> led the U.N. General Assembly to adopt in 1968 the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. That Convention declared that there is no requirement that prosecution of crimes against humanity be brought within a specified period of time.<sup>301</sup> The Convention, reflective of established principles of international law, notes in its Preamble that none of the declarations, instruments, or conventions relating to the prosecution and punishment of war crimes and crimes against humanity allow for a limitation period.<sup>302</sup>
493. As discussed herein, in regard to the Application for Restitution and Reparations filed in this case, the principle against limiting the time to seek relief for war crimes and crimes against humanity applies with equal force to the right to reparations as a result of the original criminal conduct.<sup>303</sup> Moreover, the fact that the failure to repair the original violations constitutes a continuing one negates any question of time limits.
494. The Judges find that there is no statute of limitations that bars this Tribunal from considering the allegations contained in the Common Indictment.

(d) *Double Jeopardy – Non Bis in Idem*

495. The Judges note the argument that those accused who have already been tried for crimes against humanity committed during World War II would be subjected to double jeopardy if they were tried in the Peoples’ Tribunal. We find this claim to be without merit. First, we do not consider that a defence of double jeopardy lies because this Tribunal functions as an extension of the prior IMTFE trial and other post war trials and, as to the accused previously tried, as a reopening of their cases. Thus, there is no bar to considering evidence previously deduced as pertinent to these proceedings since the prior proceedings are incorporated herein. Second, the Common Indictment charges rape and sexual slavery as crimes against humanity. While there were allegations of certain instances of

<sup>300</sup> See ICC Statute (preamble and art 5) stating that genocide, war crimes, and crimes against humanity are “the most serious crimes of concern to the international community as a whole.” Rape and sexual slavery are among the crimes listed as constituting war crimes and crimes against humanity.

<sup>301</sup> Art. I(b) states that no statutory limitation shall apply to crimes against humanity. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, GA Res. 2391 (XXIII), annex, 23 UN GAOR Supp. (No. 18) at 40, UN Doc A/7218, 26 Nov. 1968. Entered into force 11 Nov. 1970.

<sup>302</sup> In addition, domestic war crimes legislation has been passed in a number of states, such as the United Kingdom, Canada, Germany, and Australia, with the result that domestic courts have continued to convict Nazi war criminals for international crimes committed more than 50 years ago during World War II. See, e.g., Canada’s Crimes against Humanity and War Crimes Act, 2000, c. 24.

<sup>303</sup> As expressed by Mr. Louis Joinet, the Special Rapporteur of the Sub-Commission on impunity of perpetrators of violations of civil and political rights, “[p]rescription is without effect in the cases of serious crimes under international law.” Further, he added that a statute of limitations “cannot run in respect of any violation while no effective remedy is available.” Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (civil and political) by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997, para. 31.



rape and sexual violence charged in the IMTFE Indictment, there are legally significant differences that prevent double jeopardy from arising here. The IMTFE Indictment contained no charges covering either the “comfort system” or the rapes at Manzanilla. Further, the fact that some instances of rape or forced prostitution were cited in the IMTFE Judgement would not preclude a subsequent court from trying similar conduct committed against different victims or at different times and places.<sup>304</sup> In other words, the crimes charged in this Common Indictment clearly did not form the underlying basis for the sex crimes covered in the IMTFE Judgement.

496. In sum, the Prosecutors have argued that the charges brought are against those who could have been and should have been indicted by the IMTFE in 1946 for crimes of rape and sexual slavery as crimes against humanity. While some of those accused herein were in fact indicted, tried, and convicted (or acquitted as to some charges) in the IMTFE or in other post-World War II trials, they were not tried for the sexual violence alleged in the Common Indictment, in particular the system of sexual slavery or the rapes at Manzanilla.

(e) *Head of State/Official Immunity*

497. We next turn to the claim that heads of states and other high-ranking officials enjoy absolute immunity from prosecution for crimes committed while acting in an official capacity. Article 5(1) of this Tribunal’s Charter, which is consistent with language in other recent international criminal tribunal charters,<sup>305</sup> states:

The official position of any accused person, whether as the Emperor, the Head of the State or Government, a military commander or a responsible government official shall not relieve such person of criminal responsibility, nor mitigate punishment.

498. The exceptional seriousness of crimes against humanity negates any argument that official status - whether head of state or otherwise - immunises a person from prosecution. Historically, states developed diplomatic immunity in order to facilitate relations between states. In essence, states designed the doctrine to prevent one state from challenging the official actions carried out by another state’s leaders, as this was seen as not only an interference with state sovereignty but also an impediment to the efficient and effective functioning of intergovernmental relations.

<sup>304</sup> Because criminal prosecution under international law is a rare occurrence, the concept of double jeopardy in the international crimes context has not been well-developed. We refer therefore to Article 20.1 of the Rome Statute of the International Criminal Court which stipulates that no person shall be “tried before the Court for conduct which formed the basis of crimes for which the person has been convicted by the Court.” We understand the term “conduct” in this context to refer to specific forms and incidents of illegal conduct and not any and all illegal conduct that might conceivably have been tried. Thus, for example, if an accused is convicted of crimes against humanity consisting of murder, but not of rape, or if there was no evidence of rape submitted as an underlying basis for a conviction on inhumane treatment, the Judges do not consider that the accused person has been previously tried and convicted for the conduct of rape. Likewise, if an accused has been convicted or acquitted of crimes against humanity consisting of rape in one defined context, for example, the Rape at Nanking, but not for rape against different victims or occurring at a different time or place, the double jeopardy bar would not preclude a subsequent charge of rape. In other words, simply because “crimes against humanity” is charged in one context does not require that a second charge of crimes against humanity be barred by the rule against double jeopardy. Otherwise one charge of crimes against humanity could result in insulating other egregious conduct from prosecution. Thus, as discussed *infra*, the fact that the IMTFE Judgement mentions that women were forced into prostitution under HATA’s command – which could be considered to be a reference to the “comfort system” – would not operate to bar subsequent prosecution for his responsibility for such conduct when it does not form the underlying basis for crimes for which he has already been tried.

<sup>305</sup> See ICTY Statute, art. 7(2); ICTR Statute, art. 6(2), providing: “The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.”

499. The Treaty of Versailles of 28 June 1919 recognised as a general principle of international law that immunities granted to heads of states are limited and not absolute, especially when international crimes are involved. In Article 227 of that Treaty, the Allied and Associated Powers publicly accused William II of Hohenzollern, formerly the German Emperor, of “a supreme offence against international morality and the sanctity of treaties” and recommended the establishment of a special tribunal to try the former head of state.<sup>306</sup> Article 227 was based on the Report presented to the 1919 Preliminary Peace Conference by a commission of 15 leading international law scholars. The Report, noting the grave crimes committed, including murder, rape, and torture, stated:

[I]n the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a properly constituted tribunal. This extends even to the case of heads of states. An argument has been raised to the contrary based upon the alleged immunity, and in particular the alleged inviolability, of a sovereign of a state. But this privilege, where it is recognised, is one of practical expedience in municipal law, and is not fundamental. However, even if, in some countries, a sovereign is exempt from being prosecuted in a national court of his own country the position from an international point of view is quite different. . . . If the immunity of a sovereign is claimed to extend beyond the limits above stated, it would involve laying down the principle that the greatest outrages against the laws and customs of war and the laws of humanity, if proved against him, could in no circumstances be punished. Such a conclusion would shock the conscience of civilised mankind.<sup>307</sup>

500. The Charters of the Nuremberg Tribunal and the IMTFE authorised the Tribunals to prosecute persons acting in an official capacity. Article 6 of the Tokyo Charter and Article 7 of the Nuremberg Charter explicitly denied immunity to state actors, regardless of their position as head of state or otherwise. In specifying that holding an “official position” as a government official or other superior does not free an accused from a crime within the jurisdiction of the Tribunal, the Tokyo and Nuremberg Charters provide:

Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superiors shall, of itself, be sufficient to free such accused from responsibility for any crimes with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

501. The Nuremberg Judgement held that the doctrine of sovereign immunity does not apply to responsibility for international crimes:

It was submitted that . . . where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, [this contention] must be rejected. . . . The principle of international law,

<sup>306</sup> The Treaty of Versailles, adopted on 28 June 1919, Article 227.

<sup>307</sup> Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, 29 March 1919, Carnegie Endowment for International Peace, Division of International Law, Pamphlet No. 32, reprinted in 14 Am. J. Int'l L. (1920) (Supp.), pp. 95, 116.

which under certain circumstances, protects the representative of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings.<sup>308</sup>

502. More specifically, the Nuremberg Tribunal made clear that sovereign immunity of the state did not apply when the state authorised acts, such as crimes against humanity, which were “outside its competence under international law”:

[T]he very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State if the State in authorizing action moves outside its competence under international law.<sup>309</sup>

503. In denying head of state immunity, the Nuremberg Tribunal found that Karl Doenitz, as head of state of Germany from 1 to 9 May 1945, was “active in waging aggressive war,” in part based on his order to the Wehrmacht to continue the war in the East. He was convicted of Crimes Against Peace and sentenced to 10 years’ imprisonment.<sup>310</sup>
504. The IMTFE did not have occasion to consider this issue as the Emperor of Japan was not charged by the IMTFE Prosecutors. The decision not to prosecute Emperor HIROHITO was not, however, based on the belief that he was immune under international law as a head of state. Rather, it was a political decision made by the Allies and “the good grace of General Douglas MacArthur,” who was the Supreme Allied Commander and the architect of the IMTFE Charter.<sup>311</sup>
505. The Tokyo and Nuremberg Charters and the jurisprudence of these Tribunals, which deny head of state immunity, reflect international law as it existed in 1946.
506. 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 such, they do not form part of the official functions that the immunity doctrine is designed to protect.<sup>312</sup> Indeed, the *Kunarac* Judgement considers acting in an official capacity to be an aggravating factor, not a mitigating factor or a defence, “because the official illegitimately used and abused a power which was conferred upon him or her for legitimate purposes.”<sup>313</sup>

<sup>308</sup> IMTFE Judgement (Roling), pp. 41-42.

<sup>309</sup> IMTFE Judgement (Roling), p. 42.

<sup>310</sup> IMTFE Judgement (Roling), pp. 110, 131.

<sup>311</sup> Bassiouni, *Crimes against Humanity*, p. 466; see also the view of B.V.A. Röling, one of the judges of the IMTFE, that the decision not to prosecute the Emperor was the result of a political, rather than a legal, decision by the American President, contrary to the wishes of Australia and the Soviet Union. Roling & Cassese, *The Tokyo Trial and Beyond* (1994) (paperback edition), p. 40.

<sup>312</sup> See “Universal Jurisdiction and Absence of Immunity for Crimes Against Humanity”, Amnesty International, AI-index: EUR 45/001/1999-01/01/1999, on their website [www.aiusa.org](http://www.aiusa.org). See also dissent by Judge Patricia Wald on the *ultra vires* doctrine in the context of sovereign immunity, in *Princz*, 26 F.3d at 1180.

<sup>313</sup> *Kunarac* Trial Chamber Judgement, para. 494. Note that while the IMT and IMTFE Charters did allow the Tribunals to consider acting in an official capacity in mitigation of punishment, the ICTY and ICTR Statutes prevent it from being considered as a mitigating factor. See IMTFE Charter, art. 6; IMT Charter, art. 7; ICTY Statute, art. 7; ICTR Statute, art. 6.

507. Despite this precedent, the *amicus curiae* contends that this Tribunal has no power to try Emperor HIROHITO because Article 3 of the Meiji Constitution, the Japanese Constitution at the time of the Second World War, placed him above the law.<sup>314</sup> However, domestic law cannot create an immunity from responsibility under international law. Indeed, giving validity to such claims would undermine the legitimacy and the effective enforcement of international law.
508. The Judges find that no head of state immunity exists on behalf of Emperor HIROHITO that would relieve him of responsibility incurred for crimes against humanity.

**B. THE SUBSTANTIVE CRIMES CHARGED:  
RAPE AND SEXUAL SLAVERY AS CRIMES AGAINST HUMANITY**

**1. Introduction**

509. Here we consider the legality of the substantive charges in light of the applicable law during the period 1937-1945 and whether the acts constituting those crimes have been proven before this Tribunal. Counts 1-2 of the Common Indictment charge Emperor HIROHITO and eight other high-ranking Japanese military and political officials with responsibility for “crimes against humanity” consisting of rape and sexual slavery of the “comfort women.” Count 3 charges Emperor HIROHITO and General YAMASHITA Tomoyuki with responsibility for “mass rape” of women at Mapanique (Count 3).<sup>315</sup> These charges are based on Article 2(1) of this Tribunal’s Charter which provides:

The Tribunal shall have jurisdiction over crimes committed against women as war crimes, crimes against humanity and other crimes under international law. These crimes include, but are not limited to the following acts: sexual slavery, rape and other forms of sexual violence, enslavement, torture, deportation, persecution, murder, and extermination.

510. Below, we examine whether prosecution for “crimes against humanity” satisfied the principle of legality under international law at the time the offences occurred and identify the threshold criteria that transformed common crimes or war crimes into crimes against humanity. Next, we consider whether rape and sexual slavery were cognizable crimes under international law at the applicable time, and then examine whether the Prosecutors have proven that the specific acts charged – sexual slavery and rape – constituted crimes against humanity.<sup>316</sup> Then we address whether the accused can be held criminally responsible for such crimes.

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<sup>314</sup> The Constitution of the Empire of Japan, Exhibit 199. The Emperor’s political powers were independent from and superior to the legislative, judicial and administrative powers of the Japanese government. In addition, he ruled Japan and the Japanese people by divine provenance. Article 3 of the Constitution.

<sup>315</sup> See Common Indictment of the Women’s International War Crimes Tribunal for the Trial of Japanese Military Sexual Slavery, December 2000.

<sup>316</sup> The Prosecutors’ Application for Restitution and Reparations also requires this Tribunal to determine the responsibility of the state of Japan for these crimes and for the continuing violations in relation thereto.

2. ***Crimes Against Humanity:  
Principle of Legality and Threshold Conditions***

(a) ***Origins of Crimes Against Humanity and Development in International Law Prior to 1937***

511. Our initial task is to determine whether crimes against humanity represented a concept that was sufficiently established as a matter of international law from 1937-1945 to satisfy the requirements of legality or *nullum crimen sine lege*. As noted previously, if the accused had been willing to present a defence, they might argue that the crime was not established and that, therefore, the Common Indictment should be dismissed so as to avoid holding the defendants responsible for acts which were not criminal at the time they were committed.
512. The Tribunal notes that the state of Japan “accept[ed] the judgements of the International Military Tribunal for the Far East and of other Allied War Crimes Courts both within and outside of Japan” in the Treaty of Peace with Japan, signed at San Francisco on 8 September 1951 (the “San Francisco Peace Treaty”).<sup>317</sup> On this basis, Japan consented to both the jurisdiction of the IMTFE and its Judgement. The crimes of rape and sexual slavery as crimes against humanity were properly within the jurisdiction of the IMTFE. Given that this Tribunal is an extension or reopening of the IMTFE proceedings, Japan’s consent in the San Francisco Peace Treaty applies to this Tribunal as well. Still, we consider it our obligation to determine whether charging these crimes is also consistent with the principle of *nullum crimen sine lege*.
513. The term “crimes against humanity” was incorporated in Article 6(c) of the Nuremberg Charter, appended to the Allied London Agreement of August 8, 1945 and later in the IMTFE Charter.<sup>318</sup> We have considered the criticism of prosecuting this crime in the post-war Tribunals.<sup>319</sup> After reviewing the antecedents of this crime in the post-war Tribunal Charters as well as in their Judgements, and having the benefit of the subsequent practice of states as well as opinions of jurists who have largely confirmed the earlier Judgements, the Judges find that prosecution for crimes against humanity did not then and does not here violate the principle of *nullum crimen sine lege*.

(b) ***Precedents for the Concept of Crimes Against Humanity***

514. 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. In terms of the principle of *nullum crimen sine lege*, it is disingenuous to assert that the acts constituting crimes against humanity were already recognised in justice systems worldwide as crimes of the gravest dimension. One of the main reasons that the

<sup>317</sup> Treaty of Peace with Japan, adopted on 8 Sept. 1951, Article 11 (“San Francisco Peace Treaty”).

<sup>318</sup> Article 6(c) of the Nuremberg Charter defines the acts constituting Crimes against Humanity as:  
[M]urder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, *before or during the war*, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Article 5(c) of the IMTFE Charter defines the acts constituting crimes against humanity in largely identical terms. The differences are not relevant here.

<sup>319</sup> M. Cherif Bassiouni, Crimes against Humanity, in *International Criminal Law* (M. Cherif Bassiouni ed., vol. I, 2<sup>nd</sup> ed. 1999), pp. 563-588; *Tadic* Appeals Chamber Judgement, paras. 649-659.

category of crimes against humanity was included along with war crimes in the post-war Tribunal Charters was to capture the outrage at the enormity of the atrocities in terms of their systematic nature and the magnitude of suffering inflicted.<sup>320</sup> 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.

515. This Tribunal recognises further that the concept that crimes that are particularly abhorrent constitute “crimes against humanity” has its origins in a number of pre-existing international legal sources. Among the oldest sources are the prohibitions against piracy and slave trading.<sup>321</sup> Historically, piracy and slave trading were committed on the high seas and across territorial borders, respectively. Due to the transnational nature of these crimes and their gravity, their perpetrators were referred to as *hostis humani generis*—the “enemies of all mankind”—and were “susceptible to prosecution by any nation capturing them.”<sup>322</sup> For example, the 1815 Declaration Relative to the Universal Abolition of the Slave Trade proclaimed that the slave trade was “repugnant to the principles of humanity and universal morality and created a duty to prohibit and punish it.”<sup>323</sup>
516. The precise term “crimes against humanity” was used in the early twentieth century by the Russian Foreign Minister to refer to the atrocities committed against the Armenians by Turkey.<sup>324</sup> Upon his suggestion, reference to “crimes against humanity and civilization” was used in a 1915 Declaration by the governments of France, Great Britain, and Russia regarding the Armenian genocide.<sup>325</sup>
517. A few years later, statements made by the 1919 War Crimes Commission of World War I also referred to the need to punish “the greatest outrages against ... the laws of humanity.”<sup>326</sup> In addition, the peace treaty concluding the Italo-Ethiopian War of 1935-36

<sup>320</sup> For example, the Nuremberg Indictment alleged: “[The Nazis] conducted deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial, or religious groups, particularly Jews, Poles, and Gypsies and others.”

<sup>321</sup> Roger S. Clark, “Crimes Against Humanity and the Rome Statute of the International Criminal Court,” presented at a conference on “The Rome Statute of the International Criminal Court: A Challenge to Impunity”, University of Trento, Italy, May 13-15, 1999; Jordan Paust, “Threats to Accountability after Nuremberg: Crimes Against Humanity, Leader Responsibility and National Fora”, 12 New York Law School Journal of Human Rights, (1996), pp. 545, 549.

<sup>322</sup> *Tel-Oren et al. v. Libyan Arab Republic, et al.*, 233 U.S. App. D.C. 384, 726 F. 2d 774, argued 1982, (1984), p. 781.

<sup>323</sup> 2 Martens Nouveau Recueil 432, reprinted in 63 Parry’s T.S. 473 (1969). Congress of Vienna, Act XV.

<sup>324</sup> Gary Jonathan Bass, *Stay the Hand of Vengeance* (2000), pp. 115-116.

<sup>325</sup> A detailed account is told by Gary Jonathan Bass. In *Stay the Hand of Vengeance* Bass describes the negotiations which resulted in the use of this term as follows: The Russian Foreign Minister sent a draft text of the Declaration to Britain and France which provided: “In face of these fresh crimes committed by Turkey against Christianity and civilization, Allied Governments announce publicly . . . that they will hold all the members of the Ottoman Government, as well as such of their agents as are implicated, personally responsible for Armenian massacres.” Britain was uncomfortable framing the issue as “against Christianity”, and therefore, the Russian Foreign Minister proposed replacing “Christianity” with “humanity.” Special military courts were set up by Turkey, upon the insistence of Britain, to conduct trials for the massacres, deportations and other atrocities against the Armenians. However, only a couple of these trials were held. PP. 116, 124-130. See also Olivia Swaak-Goldman, “Crimes Against Humanity,” in Kirk McDonald and Swaak-Goldman eds., *Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts*, 2000, at 146, footnote 4, referring to the Declaration of the Governments of France, Great Britain and Russia, 28 May 1915, cited in the United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, pp. 32-38, 189 (London 1948); see also, Egon Schwelb, “Crimes against Humanity”, 23 *British Year Book of Intl Law* (1946), pp. 178, 181.

<sup>326</sup> The Report of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, established at the Peace Conference in Paris on 25 January 1919, which concluded that violations of “the elementary laws of humanity” had occurred. U.S. members of the Commission dissented on this point. Carnegie Endowment for International Peace, Pamphlet No. 32, *Violation of the laws or customs of war: Reports of the majority and dissenting*

exhorted Italy to take all necessary steps to apprehend and surrender those accused of having “committed, ordered or abetted war crimes and crimes against peace or humanity”, during the war.<sup>327</sup> Thus, even at the time of the offences charged, the term “crimes against humanity” and similar concepts had gained a currency that reflected the notion that certain crimes are so egregious that they become the concern of all humanity as a whole.<sup>328</sup>

(c) *Connection to War Crimes and Other International Crimes*

518. Crimes against humanity committed during the war in the Asia-Pacific and during the Second World War were also closely tied to, and an outgrowth of, war crimes.<sup>329</sup> This provides a further basis for adjudicating this crime as consistent with the principle of legality. First, most of the acts designated as crimes against humanity – and specifically those charged here – were either explicitly or implicitly included within the legal parameters of war crimes. The purpose of specifying these acts as “crimes against humanity” was not only, as previously stated, to express outrage at the enormous scope of these crimes, but also, *inter alia*, to recognise criminal responsibility for acts which were comparable to war crimes, but which were committed against a civilian population of the perpetrator state or against stateless persons.
519. Moreover, the major international instruments regulating armed conflict and applicable during 1937-1945 demonstrate that states had already accepted the principle that the codification of war crimes was not exhaustive but that other forms of inhumane treatment generally recognised as such or that emerge and shock the public conscience are likewise prohibited. Indeed, the Martens Clause of the 1907 Hague Convention makes this principle explicit:

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from usages established among civilised peoples, from the laws of humanity, and the dictates of public conscience.<sup>330</sup>

520. The Martens Clause stands for the proposition that even though formal law fails to prohibit certain inhumane acts, such acts can be legitimately treated as crimes if their character is accepted as criminal in nature but the offending conduct is not necessarily explicitly named. The justification that such protection is inherent in the “laws of humanity” and the “dictates of public conscience” is based on the same general principle as that underlying the codification of “crimes against humanity.” The Martens Clause provides a solid foundation for the codification of crimes against humanity in the Nuremberg Charter and later in the Tokyo Charter and for their application by the Tribunals.

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reports of American and Japanese members of the Commission of Responsibilities; Schwelb, *Crimes Against Humanity*, pp. 178, 180.

<sup>327</sup> Swaak-Goldman, referring to Emperor Haile Selassie of Ethiopia’s many denouncements of the crimes committed by the Italian forces and authorities during the conflict and after Ethiopia’s annexation, against the Ethiopian civilians. The Peace Treaty of February 10, 1947, concluded the Italo-Abyssinian conflict. War Crimes Commission, pp. 189-190.

<sup>328</sup> Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, 2000, fn. 73, p. 349.

<sup>329</sup> M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 1999, p. 42.

<sup>330</sup> 1907 Hague Convention IV, preamble.

521. The close relationship between crimes against humanity and war during the pertinent period was also explicit in the Nuremberg and IMTFE Charters and applied by the Judges. The Charters required that the enumerated acts listed as crimes against humanity, with the exception of persecution, be committed before or during a war and that all crimes be committed “in execution of or in connection with any crime within the jurisdiction of the Tribunal” (i.e., crimes against peace or war crimes).<sup>331</sup> One expert writes:

This requirement was necessary in 1945 insofar as “crimes against humanity” did not exist in positive international criminal law even though its origin and sources clearly exist in the international regulation of armed conflicts. Article 6(c) extended the same prohibitions that existed in time of war against civilian populations of another state to the same category of protected persons within the jurisdiction of the state.<sup>332</sup>

522. While subsequent developments cast doubt on and more recently have decisively rejected the need to prove a connection to war or to another crime, it is not necessary to explore this point at length since the connection is unquestionably present in this case.

*(d) The World War II Tribunals’ Treatment of Crimes Against Humanity*

523. According to the Nuremberg Judgement, its Charter was definitive and binding on the Tribunal with respect to the law to be applied by it. Significantly, the IMT found that the Charter was an articulation of then prevailing international law, stating: “The Charter is not an arbitrary exercise of power. . . . [I]t is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law.”<sup>333</sup> The Nuremberg Judgement recognised that although the term “crimes against humanity” was first officially inscribed in the IMT Charter, an international prosecutorial instrument, the concept was already established in international law.

524. Crimes against humanity was subsequently identified and incorporated as a substantive crime in Article 5(c) of the IMTFE Charter in terms quite similar to that of the Nuremberg Charter.<sup>334</sup> Both Tribunals also recognised crimes against humanity as an independent juridical concept,<sup>335</sup> at the same time as they linked crimes against humanity to war crimes, explicitly and implicitly, when rendering their Judgements.<sup>336</sup> The Nuremberg Tribunal in particular made clear that criminal sanction extended to conduct such as persecution and extermination, acts which had not been explicitly identified as war crimes; it also applied the crime to cover persons who were not in the hands of the enemy state and therefore not necessarily protected under the laws of war.

525. In the IMTFE Indictment, the Prosecutors expressly charged the accused with crimes against humanity, including for acts of sexual violence. In generally alleging crimes

<sup>331</sup> Article 5 of the IMTFE Charter also required, as a threshold condition for the exercise of the jurisdiction of that Tribunal, that the accused be charged with crimes against peace.

<sup>332</sup> M. Cherif Bassiouni, ed., *International Criminal Law: Crimes* (vol. I, 2d ed. 1999), p. 571 (hereinafter “Bassiouni, Crimes”).

<sup>333</sup> The Nuremberg Judgement, p. 218.

<sup>334</sup> We note that the final amended IMTFE Charter deleted the phrase “against a civilian population,” in order to “render punishment possible for the wholesale killing of military personnel in an unlawful war.” IMTFE Judgement (Roling), p. 475.

<sup>335</sup> IMT Judgement, pp. 84-85. See also IMTFE Judgement, p. 48,439 incorporating the jurisdictional rulings of the IMT.

<sup>336</sup> The Nuremberg Tribunal treated its conclusions with respect to crimes against humanity and war crimes jointly. The IMTFE Tribunal also merged the two concepts by treating crimes against humanity as magnified war crimes.



committed, the prosecution accused the defendants of responsibility for, *inter alia*, “mass murder, rape, pillage, brigandage, torture, and other barbaric cruelties inflicted upon the helpless civilian population of the overrun countries.”<sup>337</sup> Group Three of the Indictment, titled “Conventional War Crimes and Crimes Against Humanity,” brought charges against the accused who “together with divers other persons” incurred responsibility for the crimes alleged in Counts 53-55.<sup>338</sup> Although the IMTFE Indictment explicitly charged sexual violence, it did not include either the rape and sexual slavery of the “comfort women” or the rapes at Mananque within the purview of the charges.

526. In the IMTFE Judgement, the focus was largely on war crimes instead of crimes against humanity, with the language indicating that the judges considered crimes against humanity subsumed within and forming part of the war crimes charges. Although the IMTFE Judgement did not separately address the propriety of exercising jurisdiction over crimes against humanity, it often used language drawn from the concept of crimes against humanity to describe the type and form of crimes committed against the civilian population. For example, under the sub-heading “Conventional War Crimes (Atrocities),” the Judgement emphasised that it received evidence of “torture, murder, rape and other cruelties of the most inhumane and barbarous character.” The IMTFE Judgement also transcended the framework of war crimes in that it did not distinguish between violations inflicted upon Japanese, Korean and Chinese persons and those committed against individuals not under the authority of Japan.<sup>339</sup>
527. Crimes against humanity was also defined in the Control Council Law No. 10, promulgated by the Allies to try alleged World War II European war criminals whose crimes had specific locales.<sup>340</sup> The CCL10 definition of crimes against humanity, though largely similar to that contained in the IMT and IMTFE Charters, included some significant differences. For example, CCL10 did not require that the crimes be committed “before or during the war” or in connection with war crimes or crimes against the peace. CCL10 also identified more specific offences, including rape, as one of the acts explicitly constituting crimes against humanity.
528. Based on this review of the origins of the concept of “crimes against humanity” and its treatment in the post-war Tribunals, we find that this concept did exist under international

<sup>337</sup> IMTFE Indictment, p. 31, as reproduced in the IMTFE Docs, Vol 20, Annex A-6.

<sup>338</sup> Appendix D attached to the Indictment, titled “Incorporated in Group Three,” provided “particulars of breaches” of the laws or customs of war. Appendix D asserted that the accused were responsible for “inhumane treatment,” and other “mistreatment” because “prisoners of war and civilian internees were murdered, beaten, tortured and otherwise ill-treated, and female prisoners were raped by members of the Japanese forces.” In addition, Appendix D alleged that “female nurses were raped, murdered and ill-treated.” Also, “[l]arge numbers of the inhabitants of such territories were murdered, tortured [sic], raped and otherwise ill-treated [sic], [and were also] arrested and interned without justification.” Appendix D to the Indictment, as reproduced in IMTFE Docs, Vol 20, at pp. 111, 113, 117.

<sup>339</sup> IMTFE Docs, Vol 20, Judgment, transcript pp. 49591-49592. See also e.g. Judgment, transcript pp. 49592-49594 (Vol 20). The Tribunal also stated under the heading Responsibility for War Crimes Against Prisoners that “[r]esponsibility for the care of prisoners of war and of civilian internees (all of whom we will refer to as ‘prisoners’) rests therefore with the Government having them in possession. This duty is not limited to the duty of mere maintenance but extends to the prevention of mistreatment. In particular, *acts of inhumanity* to prisoners which are forbidden by the customary law of nations as well as by conventions are to be prevented by the Government having responsibility for the prisoners.” IMTFE Judgment (Roling), p. 29; see also discussion of the Rape of Nanking, *Ibid.*, pp. 389-391.

<sup>340</sup> Under Article 2(c) of CCL10, “Crimes against Humanity” is defined as:

Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds, whether or not in violation of the domestic laws of the country where perpetrated.

law by 1937-1945, and thus, that the Indictment herein charging the accused with crimes against humanity does not violate the *nullum crimen sine lege* principle.<sup>341</sup>

(e) *Threshold Conditions of Applicability*

529. Having determined that the principle of *nullum crimen sine lege* is not a barrier to this Tribunal's jurisdiction to adjudicate the charges of "crimes against humanity," we next examine when the crimes of rape and sexual slavery charged herein also constitute "crimes against humanity."
530. As discussed above, both the IMT and the IMTFE Charters included certain threshold conditions in the definition of crimes against humanity, namely that the acts be committed before or during the war,<sup>342</sup> and in execution of or in connection with either war crimes or crimes against the peace.<sup>343</sup> The linkage to war was not required by the other war crimes trials and such linkage is no longer required as a matter of customary international law today.<sup>344</sup> For the purposes of this Judgement, however, the Judges accept that the

<sup>341</sup> We note that institutions and proceedings subsequent to the World War II Tribunals have increasingly regarded crimes against humanity as a part of customary international law. Immediately succeeding the Nuremberg Tribunal, the United Nations (UN) General Assembly in 1946 affirmed the prohibition of crimes against humanity in a resolution entitled, Affirmation of the Principles of International Law recognised by the Charter of the Nuremberg Tribunal. U.N.G.A. res. 95 (I) of 11 December 1946. Four years later the UN International Law Commission (ILC), acting on the directive of the General Assembly, followed the principles recognised in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal in the Draft Code of Crimes. (*Nürnberg Principles*, Ybk I.L.C., 1950, Vols I & II., para. 124.) The ILC noted that the Nuremberg Tribunal "did not... exclude the possibility that crimes against humanity might be committed also before the war" (para. 122), and that the specific enumerated crimes constituted crimes against humanity "even if they are committed by the perpetrator against his own population." (para. 197).

Subsequent treaties on international law confirmed that the substantive crime had also achieved customary status in international law. See the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, of 26 Nov. 1968 at art. I (deciding that no statutory limitation shall apply to crimes against humanity, "even if such acts do not constitute a violation of the domestic law of the country in which they were committed"); the I.L.C.'s Draft Statute for a Permanent International Criminal Court, Report of the I.L.C. on the work of its Forty-sixth Session, U.N. Doc. G.A.O.R. A/49/10 ("I.L.C. Draft Statute") at art. 20 (including crimes against humanity as a crime within the jurisdiction of the court and one which is a crime under general international law). The UN Secretary General in a subsequent report gave further legitimacy to the codified crime by explicitly noting that the Nuremberg Charter, as well as the designation of individual criminal responsibility for crimes against humanity had acquired customary international law status. See *Tadic* Trial Chamber Judgement, para. 622, referring to the Report of the Secretary General, para. 35.

In recent years the Charters of the Ad Hoc International Criminal Tribunals of the former Yugoslavia (ICTY) and Rwanda (ICTR), and the Rome Statute of the International Criminal Court (ICC) have also incorporated the doctrine of crimes against humanity. (See Article 5 of the ICTY Charter, Article 3 of the ICTR Charter, and Article 7 of the Rome Statute of the ICC.) It is important to note that the recent codifications have verified that crimes against humanity is a separate crime, and does not necessarily bear a connection to war or to war crimes, despite there being some overlapping of the two. The ICTY case law has also confirmed the separation of crimes against humanity from the war context, though its statute still fails to reflect this progression in its definition of crimes against humanity. The *Tadic* Trial Chamber Judgment stated that: "[i]t is by now a settled rule of customary international law that crimes against humanity do not require a connection to an armed conflict." Para. 623. Thus, not only has the ICTY reaffirmed the legitimacy of the doctrine of crimes against humanity, it has also confirmed the separate nature of crimes against humanity from war crimes.

<sup>342</sup> Only the crime of persecution is not so temporally limited in the Charter.

<sup>343</sup> Article 5(c). We have already noted that the condition in chapeau to Article 5 that the accused be charged with crimes against the peace is not an essential part of the definition of crimes against humanity.

<sup>344</sup> Both these predicates were dispensed with in the other war crimes trials held in Europe and Asia after the war. For example, the Control Council Law 10, which governed the subsequent Military Tribunals established by the Allies to try alleged war criminals not tried by the IMT, did not have this requirement CCL10, Article 2(1)(c). Subsequently, in 1950, the International Law Commission recommended maintaining the link between crimes against humanity and war. Principles of International Law recognised in the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal (hereinafter 1950 ILC Report) and then its removal in the 1954 Draft Code of Offenses against the Peace and Security of Mankind, U.N. GAOR, 9th Sess., Supp. No. 9, U.N. Doc. A/2691 (1954). Uncertainty about the independence of crimes against humanity from war may have underlay the return of the war link in the Statute of the ICTY. Nonetheless, this Tribunal notes that in drafting its Statute, the UN may have defined its crimes against humanity provisions more narrowly than required by customary international law. *Tadic* Appeals Chamber Decision on Jurisdiction, paras. 78,140-141.

requisite linkage to war or to other crimes within the jurisdiction of the IMTFE was an essential condition for crimes against humanity to be justiciable in the Tokyo Tribunal and, thus, will apply it to this case.

531. The Nuremberg Charter additionally required that crimes against humanity be committed against any civilian population.<sup>345</sup> This requirement was dropped in the IMTFE Charter, presumably because of the potential for charging violations against military personnel as crimes against humanity, as well as war crimes.<sup>346</sup>
532. Beyond the requirements of the Charter, the Nuremberg Tribunal, which explicitly addressed crimes against humanity, indicated an additional threshold condition of applicability flowing from the fact that the concept of crimes against humanity was designed to embody crimes of singularly grave dimension.<sup>347</sup> Thus, the Nuremberg Judgement stressed the fact that the proscribed acts were perpetrated as part of a policy of terror carried out on a vast scale and in an organised or systematic manner. It frequently used the terms “large scale” or “systematic” to refer to the crimes committed by the Nazis. For example, in referring to the persecution and extermination of the Jews, the Tribunal characterised the policy as “a record of consistent and systematic inhumanity.”<sup>348</sup> It further found that the Jewish persecutions were “planned and systematic” in character.<sup>349</sup> Other examples can be found in its discussion of the Nazi regime’s treatment of the populations of the occupied territories, incarceration of civilians in concentration camps, and use of forced labour.<sup>350</sup> It is evident that the Tribunal attributed great importance to the fact that the prohibited acts under crimes against humanity were committed on a large-scale or systematic basis, and, thus, gave rise to the contemporary requirements that crimes against humanity be “widespread” or “systematic.”
533. Although the IMTFE Judgement did not explicitly address crimes against humanity as a separate crime, it utilised similar language stressing the scale and systematicity of the crimes committed by Japan. Accordingly, the contemporary threshold requirements<sup>351</sup> –

<sup>345</sup> IMT Charter, Article 6(c).

<sup>346</sup> M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law* (M. Cherif Bassiouni ed., Vol I., 2d ed., 1999), pp. 563-567.

<sup>347</sup> In this regard, we note that during this period, genocide was treated as a crime against humanity and was not yet recognised as a separate crime. See e.g. IMT Indictment, referring to genocide as a crime against humanity. The Genocide Convention was adopted in 1948.

<sup>348</sup> IMT Judgement, p. 247.

<sup>349</sup> IMT Judgement, p. 250.

<sup>350</sup> The Nuremberg Judgement, p. 254. With regard to the treatment meted out to the civilian population of the occupied territories, the Tribunal characterised the Nazi administration as “a systematic rule of violence, brutality, and terror.” (p. 232). In terms of the incarceration of citizens of occupied territories in concentration camps, the majority noted that “[w]ith the aid of a secret police force, this practice was widely extended, and in course of time concentration camps became places of organised and systematic murder, where millions of people were destroyed. Those who arrived at the camp were subjected to systematic cruelty.” (p. 233). With respect to Nazi occupation of territories of the Soviet Union, that occupation was “characterised by premeditated and systematic looting.” The Judgement goes on to say that “[w]hen the Soviet territory was occupied there was large scale confiscation of agricultural supplies, with complete disregard of the needs of the inhabitants of the occupied territory.” (p. 241). With regard to the forced labour, the Tribunal highlighted the fact that “the conscription of labour was accomplished in many cases by drastic and violent methods. The ‘mistakes and blunders’ were on a very great scale.” (p. 245).

<sup>351</sup> The post-war jurisprudence was incorporated into subsequent international law as the requirement that the crimes be “widespread” or “systematic,” with the terminology “large-scale” sometimes substituting for or incorporated in the concept “widespread.” Most recently, the Statute of the Rwanda Tribunal and the case law of the Yugoslav Tribunal, along with the ICC Statute, used these threshold requirements, along with the IMT requirement that the crimes be committed “against any civilian population.” ICTR Article 3; *Tadic* Trial Chamber Judgement paras. 635 & 649; ICC Statute, Article 7(1). On the other hand, the most recent codifications, with the exception of the ICTY Statute, reject the requirement of connection to

that the crimes be “widespread” or “systematic” – reflect the jurisprudence of the major post-war crimes tribunals. Further, the Judges note that the IMTFE Charter did not require that the attack be committed against any civilian population, as was required by the IMT Charter. However, because there is some dispute as to whether this was a formal requirement in 1945, we will impose this requirement for the case in hand, even though it is not strictly necessary.

534. In conclusion, the Judges find that the following threshold conditions are applicable to determining whether particular acts constituted “crimes against humanity” during 1937-1945: the prohibited acts must 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.

(f) *Application of the Threshold Conditions of Crimes Against Humanity to the Facts*

535. 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 Mapanique were all committed before and during the war in China and the expanded war in the Asia-Pacific region. Thus, the first prerequisite condition that the crimes must be committed before or during a war has been satisfied.
536. The evidence also establishes that the crimes qualify as being committed against the civilian population on a large-scale and systematic basis, although either alternative would be sufficient to establish liability. The sexual slavery was the result of an organised plan and formal policy implemented by the Japanese military and government at the highest levels. Indeed, having disease-free women and young girls readily accessible for sexual usage by the Japanese soldiers was considered an essential component of the war machinery. The “comfort women” system was systematic in much the same way as the brutal system of forced labour established by the Axis powers in Europe and Asia as well as part of a broader policy and practice, found by the IMTFE, of systematic and inhumane brutality toward civilians and prisoners alike.
537. The “comfort system” was ostensibly designed to prevent the soldiers from raping civilian women in the armies’ path or under their occupation, but not to prevent rape. The system consciously and deliberately systematised rape and sexual slavery of women and girls forced into the system, all of whom were civilians and most of whom came from poor families or cultures unable to wage an effective protest, as well as those most susceptible to false promises and offers of money. It was not accidental that civilian women from marginalised societies (poor, non-white, indigenous, uneducated, or considered lower class) were the ones consistently targeted for attack.<sup>352</sup>
538. The evidence establishes that the “comfort system” was methodically planned, highly regulated, and invariably sustained by the Japanese military and civilian authorities wherever the Japanese troops were stationed. Recruitment, conscription or capture, military transport, confinement, supply, continuous rape and sexual or other violence,

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war or to war crimes or crimes against the peace leading to the clarification of crimes against humanity as a clearly independent juridical norm applicable to non-war as well as war situations.

<sup>352</sup> The evidence indicates that some women and girls from Dutch Indonesia were taken from a prisoner of war camp and forced into sexual servitude, some of whom were wealthy and privileged, but this was very rare. After the families of those taken complained to Dutch authorities, the girls were eventually returned to the camp. Almost always, such women were taken for use by officers, not ordinary soldiers.

invasive and unethical medical “treatments,” and efforts to conceal the real nature of the system all formed part of the plan to force women and girls into sexual slavery to the Japanese military.

539. Further, there is no doubt that the “comfort system” operated on a large-scale and widespread basis. Stations were prevalent wherever Japanese soldiers were present throughout the Asia-Pacific region. The sheer number of victims – considered to be approximately 200,000 – would also demonstrate that the crimes were committed on a vast scale.
540. The evidence also indicates that the rapes committed against civilian women and girls in Mapanique were also systematic. The conduct of the soldiers at Mapanique followed a consistent pattern of rape and mistreatment. This is a sufficient basis to enable us to conclude that the mass rape of women by Japanese soldiers during the course of the attack on Mapanique was systematic. In addition, the fact that virtually all the younger women were raped would also indicate that the sexual violence was widespread. It also bears noting that the pattern of sexual attacks committed in Mapanique was strikingly similar to other mass rapes in the Philippines for which the accused YAMASHITA was held responsible in the post-war proceedings<sup>353</sup> as well as to other instances of mass rape committed by Japanese soldiers during the course of the war. The Judges stress, nevertheless, that whether planned or spontaneous, targeted or indiscriminate, massive or isolated, all sides to a conflict historically commit rape crimes, and committing such crimes in retaliation, revenge, anger, or simply opportunistically does not excuse the crimes or mitigate criminal responsibility.
541. The Tribunal finds that the rape and sexual slavery of the former “comfort women” and girls and the mass rape of women during the attack on Mapanique were both large-scale and systematic, thus satisfying the second threshold condition.<sup>354</sup>
542. The final threshold criteria, that the crimes be committed in connection with war crimes or crimes against the peace, is also satisfied. The evidence convincingly demonstrates that the system of “comfort stations” was established in part to reduce the incidence of rape of local women, so as not to arouse the antagonism of the population in occupied territories and make their submission more difficult. It was also to avoid international outrage over the crimes and increased opposition to Japan’s aggression. Other objectives of the system were to redirect the sexual aggression or urges of Japanese soldiers so that they would not contract venereal diseases from or disclose military secrets to “voluntary prostitutes” working in the area. In general, it was anticipated that having women and girls held for sexual access by the Japanese soldiers would increase their battlefield performance. These objectives were integrally related to Japan’s war effort. As noted previously, the sexual enslavement of the “comfort women” was seen by the Japanese government and military as crucial to Japan’s success in waging aggressive war. The “comfort women” and girls were treated as essential supplies, as the “booty” of war and were considered a necessary cog in the wheel of the Japanese war machine. Many of the crimes were committed in connection with Japan’s unlawful war of aggression. The third prerequisite,

<sup>353</sup> See Trial of General Tomoyuki Yamashita, US Military Commission, Manila, 8 October-7 December 1945; *In re Yamashita*, 327 U.S. 1 (1946).

<sup>354</sup> The Judges note, however, that while in this case the evidence fully established that the particular crimes of rape and sexual slavery were in and of themselves committed on a large-scale and systematic basis, the threshold requirement is only that the attack itself be large-scale or systematic, and that the prohibited act(s) form part of the broader attack against any civilian population. This has been most recently codified in the Rome Statute, Article 7(2)(1).

that the acts be committed in connection with a war crime or crime against peace, has also been satisfied.

543. The Judges find that crimes against humanity as formulated by the Charter was committed by the Japanese military during the Second World War.

### 3. *Rape as a Crime Against Humanity*

#### (a) *Introduction*

544. Having established that crimes against humanity existed under international law at the relevant time charged in the Common Indictment and that the crimes charged satisfy the then prevailing threshold conditions, the next issue to address is whether rape was properly prosecutable as a crime against humanity at the time that the acts charged in the Common Indictment were committed.
545. Crimes of sexual and gender violence have historically been trivialised and mischaracterised under international humanitarian law. Rape has long been considered an inevitable part of war, and women regarded as the legitimate spoils of war, along with livestock and other chattel. Although wartime rape began to be forbidden in the 14<sup>th</sup> century and rape has subsequently been explicitly or implicitly recognised as a serious crime in war for several centuries, its commission was often ignored or tolerated by military commanders and the military justice system. Rape and other forms of sexual violence were regarded as acts which heightened soldiers' aggression before battle and rewarded them for their bravery thereafter. The women victimised were thus conveniently sacrificed on the basis of their gender and, usually, other factors such as nationality, ethnicity, race, or poverty also played a role in their being targeted for abuse. Rape and other forms of sexual violence have also been used as strategic weapons of war, acts committed in order to terrorise and punish the population, force victims to flee their homes, humiliate the men, and stigmatise the victims as outcasts, thereby acquiring the territory fled while simultaneously disrupting and in some cases destroying the civil society of the opposing group. Prosecution of rape in military justice systems has been erratic, as have other violations of the laws and customs of war. That a pattern of tolerance set long ago has been continually repeated does not undermine the long-standing legal condemnation of rape and sexual violence in war or preclude its prosecution.<sup>355</sup>

#### (b) *Origins of Rape as a War Crime*

546. Notwithstanding the military use of rape and sexual violence as a weapon of war, rape has been prohibited by the customs of war for centuries.<sup>356</sup> As noted above, even before international humanitarian law began being codified in the latter part of the 19<sup>th</sup> century, the customary laws of war, as reflected in the writings of international publicists of the

<sup>355</sup> See e.g., Susan Brownmiller, *Against Our Will: Men, Women and Rape* (1975); Rhonda Copelon, *Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law*, 5 *Hastings Women's Law Journal* (1994), p. 243; Kelly Dawn Askin, *War Crimes Against Women, Prosecution in International War Crimes Tribunals* (1997).

<sup>356</sup> See, e.g., discussion in Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 *Am. Journal Int'l Law* (1993), p. 424; M. Cherif Bassiouni and Peter Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* (1996), p. 578; M. Cherif Bassiouni and Marcia McCormick, *Sexual Violence, An Invisible Weapon of War in the Former Yugoslavia* (Occasional Paper No. 1, International Human Rights Law Institute, 1996).

Middle Ages and a fifteenth century international military trial,<sup>357</sup> prohibited rape and other forms of sexual violence. It is beyond dispute that by 1937, rape was considered a war crime under the laws and customs of war.

547. In 1863, the United States issued a military code to govern the conduct of the Union troops during its Civil War. Known as the “Lieber Code,” it reflected then current international customary laws of land warfare.<sup>358</sup> The Lieber Code listed rape as a war crime. Significantly, rape was considered so serious that it carried the harshest possible penalty: death.<sup>359</sup>
548. The 1907 Hague Convention IV Respecting the Laws and Customs of War on Land and its annexed Regulations did not include explicit reference to rape crimes. However, it addresses rape and other forms of sexual violence in both general and more specific ways.
549. Article 1 of the annexed Hague Regulations states that belligerents must “conduct their operations in accordance with the laws and customs of war.” This has been interpreted to include a prohibition on rape and other forms of sexual violence.<sup>360</sup> In addition Chapter III of the Regulations apply to military authority exerted over the territory of the hostile state. Article 46 states: “Family honour and rights, the lives of persons and private property as well as religious convictions and practice must be respected.”<sup>361</sup> At the time, and still today, a violation of family “honour” was understood to include sexual violence and abuse.<sup>362</sup> The Tribunal considers that this interdiction should be considered as emphasizing the duty to provide supplementary protection against sexual violence. These re-enforcing proscriptions of rape reiterated that enemy inhabitants were to be spared sexual violence throughout the war, from open combat to military occupation.

<sup>357</sup> Wartime rape has been prohibited for centuries. In the 1300s, Italian lawyer Lucas de Penna urged that wartime rape be punished just as severely as rape committed in peacetime. In the 1474 trial of Sir Peter Hagenbach, an international military court sentenced Hagenbach to death for crimes, including rape, committed by his troops. William Parks, *Command Responsibility for War Crimes*, 61 *Military Law Review* (1973), p.4; M. Cherif Bassiouni, *International Criminal Law, A Draft International Criminal Code* (1980), p.8. Alberico Gentili (1552-1608) contended that it was unlawful to rape women in wartime, even if the women were combatants. Alberico Gentili, *De Iure Belli Libri Tres* (trans. John C. Rolfe, Vol. II, 1995)(1612), pp. 258-259. Hugo Grotius (1583-1645) concluded that sexual violence committed in wartime could be punished with the same rigor as sexual assault committed outside the context of war. Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres* (trans. Francis W. Kelsey, Vol. II, 1995) (1646), 656-657. The historical treatment of women in the context of war and the evolution of proscriptions of wartime rape is examined in Kelly Dawn Askin, *War Crimes Against Women* (1997); Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (1975); Rhonda Copelon, *Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law*, 5 *Hastings Women’s L.J.* (1994), p. 243; Christine Chinkin, *Rape and Sexual Abuse of Women in International Law*, 5 *European Journal of Int’l Law* (1994), p. 326; Patricia Viseur Sellers, *The Context of Sexual Violence: Sexual Violence as Violations of International Humanitarian Law, in Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts: Commentary* (Gabrielle Kirk McDonald and Olivia Swaak-Goldman eds., vol. I, 2000); Dorean Koenig and Kelly Askin, *Women and International Criminal Law, in Women and International Human Rights Law* (Kelly Askin & Dorean Koenig eds., vol. II, 2000).

<sup>358</sup> *Instructions for the Government of the United States in the Field by Order of the Secretary of War*, Washington, D.C., 24 April 1863; *Rules of Land Warfare*, War Dept. Doc. No. 467, Office of the Chief of Staff, approved 25 April 1914 (G.P.O. 1917) [hereinafter, *Lieber Code*]. For a discussion of war crimes trials prosecuting rape under provisions of this Code, see e.g., Susan Brownmiller, *Against Our Will, Men, Women, and Rape* (1975).

<sup>359</sup> Article 44 of the Lieber Code stipulated that “all rape . . . [is] prohibited under the penalty of death,” and Article 47 dictated that “[c]rimes punishable by all penal codes, such as . . . rape, . . . are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.”

<sup>360</sup> Patricia Viseur Sellers, *Emerging Jurisprudence on Crimes of Sexual Violence*, 13 (6) *Am. Univ. Int’l Law Review* (1998), p. 1523; Kelly Dawn Askin, *War Crimes Against Women* (1997).

<sup>361</sup> *Convention Respecting the Laws and Customs of War on Land, with annexed Regulations*, Oct. 18, 1907, 36 Stat. 227, 1 Bevans 631, art. 46 [Hague Convention IV].

<sup>362</sup> For instance, when Professor J.H. Morgan reported the rape of Belgium women during the First World War, the terminology he used for rape crimes was that the “[o]utrages upon the honour of women by German soldiers have been frequent.” *As quoted in* Susan Brownmiller, *Against Our Will: Men, Women and Rape* (1975), p. 42.

550. Further, Article 4 of Chapter II of the Hague Regulations relating to the treatment of prisoners of war provides that “[p]risoners of war must be humanely treated.” While Article 4 refers explicitly to the particular position of prisoners of war who were designated as combatants rendered *hors de combat*, the Judges consider that the provisions prescribing humane treatment are based upon minimum and elementary standards of humanity, as articulated in the Martens Clause, and that being afforded humane treatment includes the right to be free from rape and other forms of sexual violence.<sup>363</sup> Accordingly, women in detention were entitled to at least the same minimum standards of protection as provided to prisoners of war under international law. These standards of treatment were therefore applicable in the present context.
551. Under the Hague Convention, battlefield commanders, whether responsible for armies, militias or volunteers, as well as occupying authorities were required to teach and enforce the proscription of rape at all times in all contexts of war. The requirements of Articles 1, 4 and 46 apply directly to the treatment of “comfort women” in Mainland China, the Dutch East Indies (current day Indonesia), East Timor, the Philippines and Malaysia. Although these provisions do not regulate the treatment of a state’s own inhabitants (i.e., Japanese “comfort women”) or inhabitants of its former colonies (Korea and Taiwan), they nonetheless establish standards of minimum decency. That humanitarian law imposed these minimum standards of treatment was relied upon in the codification of crimes against humanity in the post-war Charters, which included “other inhumane acts” as a residual clause. The IMTFE Indictment cited the Hague provisions as evidence of the proscription of rape crimes.<sup>364</sup>
552. The Judges note and agree that the categorisation of rape as a crime of “honour” has been more recently criticised as minimising the violent nature of this crime, ignoring the egregious harm to the bodily integrity of the women, and reflecting as well as perpetuating the stigmatisation of raped women.<sup>365</sup> Nonetheless, the codification of crimes against family honour and rights in the early 20<sup>th</sup> century was clearly intended to incorporate and condemn rape as a war crime, despite the fact that it was not vigorously or consistently prosecuted.<sup>366</sup>
553. Accordingly, this Tribunal finds that the “comfort women”, as well as the women raped at Mapanique were entitled to protection against rape and sexual violence in the terms laid down by the 1907 Hague Convention IV and its Regulations.
554. The 1919 War Crimes Commission, which investigated and made recommendations regarding methods of punishing suspected Axis war criminals of the First World War, listed thirty-two non-exhaustive punishable violations of the laws and customs of war

<sup>363</sup> IMTFE Judgment (Roling), pp. 416-417.

<sup>364</sup> Appendix D to the Indictment, IMTFE Docs, Vol. 20, pp. 105-117.

<sup>365</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission resolution 1997/44, Comm. H.R., 54<sup>th</sup> Sess., E/CN.4/1998/54, 26 Jan. 1998; Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Report of the mission to Rwanda on the issues of violence against women in situations of armed conflict, E/CN.4/1998/54/Add.1, 4 Feb. 1998; Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict, Final report submitted by Ms. Gay McDougall, Special Rapporteur, E/CN.4/Sub.2/1998/13, 22 June 1998; Rhonda Copelon; Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law, 5 *Hastings Women’s L. J.* (1994), p.243.

<sup>366</sup> See Susan Brownmiller, *Against Our Will* (1975); Patricia Viseur Sellers and Kaoru Okuizumi, *International Prosecution of Sexual Assaults*, 7 *Transnational Law & Contemp. Problems* (1997), p. 45; Kelly D. Askin, *Women and International Humanitarian Law*, in *Women and International Human Rights Law* (Kelly Askin & Dorean Koenig eds., Vol. I, 1999), p. 41.



committed by the Axis powers. “Rape” and “abduction of girls and women for the purpose of forced prostitution” were listed as items five and six, respectively, and thus were situated high on the list and alongside other crimes of physical violence, such as murder and torture, as opposed to crimes ranked lower on the list, such as destruction of property. Not only did the inclusion of sexual violence crimes on the list of prosecutable war crimes further reinforce the status of sexual violence as war crimes in the early 1900s, their high rank on the list also underscored their gravity.<sup>367</sup> The Judges note that the state of Japan participated in the 1919 Commission, and thus the government was surely aware that crimes of rape and enforced prostitution were regarded as amongst the most serious crimes of war that deserved prosecution and punishment.

555. Between the two world wars, the 1929 Geneva Convention further codified protections for prisoners of war and provided explicitly for the protection of female prisoners of war. The protections envisaged - most designed to prevent sexual violence - were delineated by the International Committee of the Red Cross. Although, like Article 4 of the Hague Regulations, this Convention was not directly applicable to civilian internees such as the “comfort women,” the inclusion of these protections evinces the international recognition that sexual violence was considered a major wartime concern.<sup>368</sup>
556. The Tribunal finds that sexual violence was prohibited by both the laws and the customs of war by the time of the Second World War, and violations were considered prosecutable war crimes.

(c) *Rape and Other Forms of Sexual Violence in the Post-War Trials*

557. The post-war Tribunals did treat rape and other forms of sexual violence as war crimes and crimes against humanity, even though these crimes were inadequately addressed in the proceedings. The Charters of the IMTFE and IMT<sup>369</sup> did not explicitly list rape and other crimes of sexual violence as crimes within its jurisdiction to prosecute, although CCL10 did expressly list rape as a crime against humanity.<sup>370</sup> Where not specifically

<sup>367</sup> UN War Crimes Commission, XIII Law Reports of Trials of War Criminals 122, 124 (1949); History of the UN War Crimes Commission 34 (1948); “Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties,” Report Presented to the Preliminary Peace Conference, March 29, 1919, 14 Am. Journal Int’l Law (1920), pp. 95, 114.

<sup>368</sup> [Third Geneva] Convention Relating to the Treatment of Prisoners of War, 27 July 1929:  
 Art. 2. Prisoners of war are in the power of the hostile Government, but not of the individuals or formation which captured them.  
 They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity.  
 Measures of reprisal against them are forbidden.  
 Art. 3. Prisoners of war are entitled to respect for their persons and honour. Women shall be treated with all consideration due to their sex.  
 Prisoners retain their full civil capacity.  
 Art. 4. The detaining Power is required to provide for the maintenance of prisoners of war in its charge.  
 Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them.

<sup>369</sup> Charter for the International Military Tribunal for the Far East, and Charter of the International Military Tribunal, Annexed to the London Agreement, 8 Aug. 1945, 8 UNTS 279; 59 Stat. 1544, 8 AS No. 472.

<sup>370</sup> Under Article II(c) Crimes against Humanity is defined as:  
 Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.  
 Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, December 20, 1945, Official Gazette of the Control Council for Germany, No. 3, Berlin, Jan. 31, 1946, pp. 50-55.

listed in Charters or Statutes, however, rape crimes formed part of the broad category of “other inhumane acts” and were thus implicitly encompassed as crimes against humanity.<sup>371</sup> As the proceedings and jurisprudence further demonstrate with respect to war crimes, rape and other forms of sexual violence were implicitly recognised as “ill-treatment” and “inhumane acts” in the Nuremberg Charter and CCL10 and as “conventional war crimes” or violations of “the laws and customs of war” in the IMTFE Charter.<sup>372</sup> Evidence was received of various forms of sexual violence in proceedings before the IMT, IMTFE and CCL10 trials.<sup>373</sup> In some cases, particularly in the IMTFE, the Judgements based convictions explicitly on rape crimes; in other cases, rape and other forms of sexual violence were implicitly encompassed by general language in the residual clauses and the discussion of the types of atrocities committed.

(i) The IMTFE Proceedings

558. In the IMTFE Indictment against 28 defendants, rape was expressly named as a crime for which the accused incurred criminal responsibility. As noted previously, the Indictment and its Appendix D, which provided more specificity as to the allegations, both cited rape crimes. The Indictment accused the defendants of responsibility for inflicting, *inter alia*, “mass murder, rape, pillage, brigandage, torture, and other barbaric cruelties upon the helpless civilian population of the overrun countries.”<sup>374</sup> Appendix D, attached to the Indictment, asserted that the accused were responsible for “inhumane treatment,” and other “mistreatment” because “prisoners of war and civilian internees were murdered, beaten, tortured and otherwise ill-treated, and female prisoners were raped by members of the Japanese forces.”<sup>375</sup> In addition, it asserted that “female nurses were raped, murdered and ill-treated,”<sup>376</sup> and “[l]arge numbers of the inhabitants of such territories were murdered, tortured [sic], raped and otherwise il-treated [sic].”<sup>377</sup>
559. The prosecution introduced volumes of evidence indicating the routine and callous nature of sexual violence committed by Japanese troops either alone or in conjunction with other crimes.<sup>378</sup> For example, the IMTFE received and summarised evidence that the returning Japanese soldiers described as some of the sexual atrocities they had committed. The Judgement cites “some of the stories commonly heard” as follows:

<sup>371</sup> The Report of the Commission I of the International Assembly which made recommendations to the drafters of the Nuremberg Charter, indicated that the scope of the crimes against humanity article should encompass:

- (1) Crimes committed without order or authority: Serious crimes against persons, punishable by ordinary criminal law...(including, e.g.: murder, manslaughter, infliction of grievous bodily harm, torture, false imprisonment, rape, etc.)
- (2) Crimes ordered by or committed under order of or with the approval of authorities:
  - ...
  - (h) Abduction of women with the object of prostitution....

<sup>372</sup> IMT Charter, art. 6(b); CCL10, art. II(1)(b) and IMTFE Charter, art. 5(b).

<sup>373</sup> See, e.g., in IMTFE trials, Vol. 2, transcript pp. 2568-2573, 3904-3944; in IMT trials, Vol. VI, transcript pp. 211-214, 404-407; in CCL10 trials, see *Medical Case*, *Pohl Case*, and *RuSHA Case*.

<sup>374</sup> IMTFE Indictment, p. 31, as reproduced in the IMTFE Docs, Vol 20, Annex A-6 [emphasis added].

<sup>375</sup> Appendix D to the Indictment, as reproduced in the IMTFE Docs, Vol. 20, p. 111.

<sup>376</sup> Appendix D to the Indictment, as reproduced in the IMTFE Docs, Vol. 20, p. 113.

<sup>377</sup> Appendix D to the Indictment, as reproduced in the IMTFE Docs, Vol. 20, p. 117.

<sup>378</sup> For examples of documentation of sexual violence by the IMTFE, see e.g., Vol. 2, transcript pp. 2568-2573, 2584, 2593-2595, 3904-3944, 4463-4479, 4496-4498, 4501-36, 4544, 4559, 4572-73, 4594, 4602, 4615, 4638, 4642, 4647, 4660; Vol. 6, transcript pp. 12521-12548, 19995, 13117, 13189, 13641-13642, 13652. See discussion of these crimes in Askin, *War Crimes Against Women*, pp. 164-203.

One company commander unofficially gave instructions for raping as follows: 'In order that we will not have problems, either pay them money or kill them in some obscure place after you have finished.'

'If the army men who participated in the war were investigated individually, they would probably all be guilty of murder, robbery or rape.'

'[W]e captured a family of four. We played with the daughter as we would with a harlot. But as the parents insisted that the daughter be returned to them we killed them. We played with the daughter as before until the unit's departure and then killed her.'

'In the half year of battle, about the only things I learned are rape and burglary.'<sup>379</sup>

560. As part of its case, the IMTFE prosecution team submitted extensive evidence of rape and other forms of sexual violence committed by subordinates under the command of General MATSUI and his staff officer Muto in the attack on Nanking, and by troops in Changsha and Kweilin under the command of General HATA. Examining the evidence, the Tokyo Judgement characterised the crimes of rape and other forms of sexual violence as "barbarous"<sup>380</sup> and "atrocities."<sup>381</sup>
561. The Judges of the IMTFE expressed particular revulsion at the vast scale of rape and other sex crimes committed during and following the conquest of Nanking. The Judgement reports that "individual [Japanese] soldiers and small groups of two or three roamed over the city murdering, raping, looting, and burning."<sup>382</sup> The Judgement notes that after Nanking, Japanese troops under the command of General HATA moved on to Changsha where they again "freely indulged in murder, rape, incendiarism, and many other atrocities throughout the district."<sup>383</sup> Soon afterwards, they moved on to Kweilin, where "they committed all kinds of atrocities such as rape and plunder."<sup>384</sup> In what appears to be a reference to "comfort women," the Tokyo Judges found that under HATA, the Japanese forces "recruited women labour on the pretext of establishing factories. They forced the women thus recruited into prostitution with the Japanese troops."<sup>385</sup>
562. The IMTFE Judgement identified numerous other instances of rape and sexual violence perpetrated by Japanese troops against civilian women and men in the occupied territories. For the majority of women and girls, rape was simply a prelude to their

<sup>379</sup> IMTFE Judgement (Roling), p. 393.

<sup>380</sup> The Judges characterised the rape and other crimes at Nanking by saying that:

[t]he barbarous behavior of the Japanese Army cannot be excused as the acts of a soldier which had temporarily gotten out of hand when at last a stubbornly defended position had capitulated -rape, arson and murder continued to be committed on a large scale for at least six weeks after the city had been taken and for at least four weeks after MATSUI and MUTO had entered the city.

IMTFE Judgement (Roling), p. 391.

<sup>381</sup> The Tribunal President was particularly vocal, stating "that rape and murder of women and such things like that could never be just reprisals" in response to that line of questioning of a witness to the Nanking atrocities by the defence. IMTFE Docs, p. 2595.

<sup>382</sup> IMTFE Judgement (Roling), p. 389.

<sup>383</sup> IMTFE Judgement (Roling), p. 392.

<sup>384</sup> IMTFE Judgement (Roling), p. 393.

<sup>385</sup> IMTFE Judgement (Roling), p. 393.

subsequent murder. In some cases where the women were not slaughtered, they were subjected to multiple rapes and mutilation of their sexual or reproductive organs. For instance, the Judgement states that in 1940, while all the male personnel at the Blora oil field were massacred, the “[w]omen in this place were not killed, but were all raped several times in the presence of the commanding officer.”<sup>386</sup> As another example, in 1945, “[w]hen it became apparent that Manila would be liberated, massacres...were committed all over the city as well as rape and arson.”<sup>387</sup> The Tribunal found that individual murders were regularly committed by the Japanese troops and that “[m]any of them were committed ... in connection with other crimes such as rape.”<sup>388</sup>

563. The Judgement describes the gratuitous cruelty the Japanese troops inflicted toward fugitives hiding out at the German Club in Manila:

[Japanese soldiers] surrounded the Club by a barricade of inflammable material and poured gasoline over this barricade and ignited it. Thus the fugitives were forced to attempt to escape through the flaming barricade. Most of them were bayoneted and shot by the waiting Japanese soldiers. Some of the women were raped and their infants bayoneted in their arms. After raping the women the Japanese poured gasoline on their hair and ignited it. The breasts of some of the women were cut off by Japanese soldiers.<sup>389</sup>

564. The Judgement documents further brutality by officers:

A young woman about 24 years old, was caught hiding in the grass. The officer in charge of the entire patrol tore off her clothes, while two soldiers held her. He then had her taken to a small nipa hut, without walls and there the officer in charge of the patrol used his saber to cut her breasts and womb. Soldiers held her while the officer did this. At first the girl was screaming. She finally lay still and silent. The Japanese then set fire to the nipa hut.<sup>390</sup>

565. Nurses were likewise not spared from sexual violence. The IMTFE reported that during massacres in Hong Kong in 1941, “the Japanese troops entered the Military Hospital at St. Stephen’s College and bayoneted the sick and wounded in their beds, and raped and murdered nurses who were on duty there.”<sup>391</sup>

566. The Judgement also noted that Japanese forces inflicted sexual torture upon both men and women:

Torture by burning was practised extensively. This torture was generally inflicted by burning the body of the victim with lighted cigarettes, but in some instances burning candles, hot irons, burning oil and scalding water were used. In many of these cases the heat was applied to sensitive parts

<sup>386</sup> IMTFE Judgement (Roling), p. 397.

<sup>387</sup> IMTFE Judgement (Roling), p. 398.

<sup>388</sup> IMTFE Judgement (Roling), pp. 398-399.

<sup>389</sup> IMTFE Judgement (Roling), p. 399; IMTFE Docs, transcript p. 49640.

<sup>390</sup> IMTFE Judgement (Roling), p. 409.

<sup>391</sup> IMTFE Judgement (Roling), p. 399; IMTFE Docs, transcript p. 49638.

of the body, such as the nostrils, ears, abdomen, sexual organs, and in the case of women, to the breasts.<sup>392</sup>

567. The Tribunal also found that electrical shock to sexual organs was also a common method of torture:

Electric current was applied to a part of the victim's body so as to produce a shock. The point of application was generally a sensitive part of the body such as the nose, ears, sexual organs or breasts.<sup>393</sup>

568. The most common form of male sexual violence considered by the IMTFE appears to have been sexual mutilation. For example, the Judgement recounts that “[a]t Manila an eyewitness described how his house boy was tied to a pillar. The Japanese then cut off his genitals and thrust his severed penis into his mouth.”<sup>394</sup>
569. The amount of evidence of sexual violence included in the IMTFE Judgement confirms that it was regarded as a serious crime within the jurisdiction of the Tribunal. Based upon evidence of sex crimes committed by troops under their command, the defendants HATA<sup>395</sup> and MATSUI,<sup>396</sup> along with Minister Hirota,<sup>397</sup> were found guilty by the IMTFE of failing to prevent atrocities, including rape and other forms of sexual violence, committed by their subordinates. The jurisprudence of the IMTFE thus verifies that rape and other forms of sexual violence constituted crimes within the jurisdiction of the Tribunal.

<sup>392</sup> IMTFE Judgement (Roling), p. 407.

<sup>393</sup> IMTFE Judgement (Roling), p. 407; IMTFE Docs, transcript p. 49666.

<sup>394</sup> IMTFE Judgement (Roling), p. 409.

<sup>395</sup> The majority stated that HATA was “in command of expeditionary forces in China [and] atrocities were committed on a large scale by the troops under his command and were spread over a long period of time. Either HATA knew of these things and took no steps to prevent their occurrence, or he was indifferent and made no provisions for learning whether [his] orders for the humane treatment of prisoners and civilians were being obeyed.” He was regarded as “in breach of his duty as charged under Count 55.” IMTFE Judgement (Roling), p. 446.

<sup>396</sup> The verdict stated that MATSUI was:

Commander-in-Chief of the Central China Area Army, which included the Shanghai Expeditionary Force and the Tenth Army. With these troops he captured the city of Nanking.... Then followed a long succession of most horrible atrocities committed by the Japanese Army upon the helpless citizens. Wholesale massacres, individual murders, rape, looting and arson were committed by the Japanese soldiers. ...In this period of six or seven weeks thousands of women were raped, upwards of 100,000 people were killed and untold property was stolen and burned. At the height of these dreadful happenings,...Matsui made a triumphal entry into the City and remained there from five to seven days. From his own observations and from the reports of his staff he must have been aware of what was happening. He admits he was told of some degree of misbehavior of his Army by the Kempeitai, and by Consular Officials. Daily reports of these atrocities were made to Japanese diplomatic representatives in Nanking, who in turn reported them to Tokyo. The Tribunal is satisfied that Matsui knew what was happening. He did nothing, or nothing effective, to abate these horrors. He did issue orders before the capture of the City enjoining propriety of conduct upon his troops and later he issued further orders to the same purport. These orders were of no effect as is now known, and as he must have known.... His illness was not sufficient to prevent his conducting the military operations of his command nor to prevent his visiting the City for days while these atrocities were occurring. He was in command of the Army responsible for these happenings. He knew of them. He had the power, as he had the duty to control his troops and to protect the unfortunate citizens of Nanking. He must be held criminally responsible for his failure to discharge his duty.

IMTFE Judgement, at 453-454.

<sup>397</sup> The Tribunal established that in his capacity as “Foreign Minister he received reports of...[Japanese soldier’s] atrocities immediately after the entry of the Japanese forces into Nanking...He was content to rely on assurances which he knew were not being implemented while hundreds of murders, violations of women, and other atrocities were being committed daily.” IMTFE Judgement (Roling), pp. 447-448.

570. Further, in the proceedings of the U.S. Military Tribunal at Manila against YAMASHITA, the Judgement recounts evidence of mass and indiscriminate murder, rape, and pillage in Manila, a campaign that had many parallels to crimes committed during the Rape of Nanking. Although the widespread rapes became an infamous example of unrestrained and unrestricted wartime sexual aggression, the defence attempted to depict them as isolated crimes committed out of fear and uncontrollable frustration: “We see only wild, unaccountable looting, murder and rape. If there be an explanation of the Manila story, we believe it lies in this: Trapped in the doomed city, knowing that they had only a few days at best to live, the Japanese went berserk, unloosed their pent-up fears and passions in one last orgy of abandon.”<sup>398</sup> In delivering its Judgement against YAMASHITA, the President of the Commission specified that the crimes YAMASHITA “permitted”, and which were “in violation of the laws of war”, could be grouped into three categories, with one of these categories consisting of “Torture, rape, murder and mass execution of very large numbers of residents of the Philippines, including women and children.”<sup>399</sup>
571. Despite considerable evidence of rape crimes admitted into evidence during the IMTFE and other post-war trials held in the Asia-Pacific, neither the mass rapes at Mapanique nor the institutionalisation of rape and sexual slavery through the “comfort women” system was prosecuted in these proceedings.

(ii) The Nuremberg Proceedings

572. Although the Nuremberg Tribunal afforded comparatively little attention to rape and other forms of sexual violence, the fact that evidence of these crimes was admitted at trial reinforces the finding that sexual violence was recognised as within the jurisdiction of the Tribunal.<sup>400</sup> For example, one witness testified to the sexual violence and humiliation inflicted upon women in the concentration camps, where prisoners were selected for use in “brothels” and as domestic servants:

At Auschwitz there was a brothel for the SS and also one for the male internees of the staff who were called “Kapa”. Moreover, when the SS needed servants, they came accompanied by the Oberaufseherin, that is, the woman commandant of the camp, to make a choice during the process of disinfection. They would point to a young girl, whom the Oberaufseherin would take out of the ranks. They would look her over and make jokes about her physique; and if she was pretty and they liked her, they would hire her as a maid with the consent of the Oberaufseherin, who would tell her that she was to obey them absolutely no matter what they asked of her.<sup>401</sup>

573. The Russian Prosecutor introduced evidence of rape and other forms of sexual violence, such as mutilation of the breasts of women:

In the village of Semenovskoe,...the Germans bound with twine the arms of Olga Tikhonova, the 25-year-old wife of a Red Army man and mother

<sup>398</sup> Yamashita, Law Reports of Trials of War Criminals, Vol IV, p. 24.

<sup>399</sup> Yamashita, Law Reports of Trials of War Criminals, Vol IV, p. 4.

<sup>400</sup> For examples of evidence admitted at trial that concerned gender-based crimes, see e.g., IMT Docs, Vol II, transcript p. 139; Vol VI, transcript pp. 211-214; 404-407; Vol VII, transcript pp. 449-457; Vol XX, transcript p. 381.

<sup>401</sup> IMT Docs, Vol 6, pp. 213-214.