For the Panel of Judges,  
Women’s International War Crimes Tribunal

Amicus Curie  
IMAMURA Tsuguo, attorney at law

Amicus Brief

Responding to the request of the Panel of Judges of the Women’s International War Crimes Tribunal which shall try gender violence during World War Two, I, as Amicus Curie, present the following observations concerning the proceedings of this People’s Tribunal.

1. RE: Securing Due Process
First of all, I would like to remind the Judges of the war history of the Japanese Imperial Army. December 8th 1941 was the commencement date of the Asia-Pacific War. The Japanese Army invaded the Asian region with the “Four Great Operations of Invasion.” The first operation was to Malaya to destroy the British Far Eastern bases. The Japanese Imperial Army landed on the Malaya Peninsula one hour before the attack on Pearl Harbor. The second operation was in the Philippines, to drive the United States out of Asia. The third was the invasion of Indonesia to secure petroleum resources. The fourth was to suppress Burma (Myanmar) in order to cut off the supply route for materials from the U.K. and the U.S. to China, which were prolonging the Japan-China War.

As a result of these cunning and sudden operations, Korean and Taiwanese youths conscripted to assist the operations of the Japanese Imperial Army, the Asian peoples in the occupied territories, POWs, and captured citizens of the Allied states all suffered “grave human rights violations” which were beyond the imagination of most Japanese nationals.

Women in Asian countries suffered from various kinds of gender violence caused by the war undertaken “through the action of the government” of the Emperor. The facts and relevant laws are to be examined by the Tribunal. I, wishing that fair examination be carried out and authoritative judgement rendered at this historic People’s Tribunal, am going to state my observations with regard to securing the human rights of the defendants.

1) RE: Putting the deceased on trial.

Under Japanese Criminal Procedure Law, a trial shall be discontinued with a “Public Prosecution Dismissal Order” if the accused passes away during the trial proceedings. If a prosecutor indicts despite the fact that the accused is dead before the indictment, then once that fact is disclosed to the Judges, the trial shall also be discontinued with the same Order. This seems to be a universal ground for dismissal, because the right of the accused to defend himself or herself against public prosecution becomes impossible after death. The Tribunal must present clear and reasonable grounds in a judgement if the Tribunal ventures to hold trial and render guilty verdicts against deceased defendants, including Hirohito and other commanders.

2) RE: Indicting perpetrators, commandants and the Commander-in-Chief by naming them.
The protection of “due process of law”, including “Nullum Crimen Sine Lege” is the most basic principle in criminal trials. It is a universal principle to protect the right of the accused to a fair trial, including the right to question adversary witnesses, and other rights to defense. Some people claim that the rights to defense and to “due process” are not required for cases involving individual criminals accused of wartime gender violence by their victims and other concerned citizens. Even peoples’ tribunals, however, must take into consideration the principle of due process, which is provided for by the Constitution of Japan. The Tribunal should present reasonable grounds in a judgement if it is determined to name individual defendants and to find them guilty in absentia.

3) RE: State responsibility and commanders’ responsibilities for crimes.
The Prosecutors are attempting to assert the responsibility of commanders and the Commander-in-Chief for the criminal conduct of their subordinates. The Tribunal is therefore required to examine the fundamental principle of “No punishment without ‘mens rea.’” In accordance with this principle, the Tribunal must also examine the facts relating to mens rea if it applies criminal responsibility for the conduct of those other than the perpetrators.

4) RE: Indictment of Hirohito
Concerning the Prosecutors’ indictment of Hirohito: in addition to the due process issues of the indictment of the deceased, the Tribunal should examine the status of the Emperor of Japan. Under the former constitution of Japan, the Emperor was granted absolute immunity. Under the current constitution the Emperor is “The symbol of the State and the Unity of the people.” Hirohito experienced both statuses. Accordingly, the Tribunal should try deliberately, and if it finds him guilty, should present clear and universally binding persuasive legal grounds of his criminal responsibility.

In this regard, I believe that decent Japanese people expect that this Tribunal in Japan, will raise the consciousness of all Japanese people about the Emperor system, and that a reasonable judgement can bring active engagement on the part of Japanese people with the issue of wartime responsibility.

2. The Standpoint of the Japanese Government and the Public Prosecutor
Judgments of the Japanese courts concerning postwar reparation in Japan have dismissed plaintiffs’ claims on the grounds that the statute of limitations has lapsed, since the gender violence by the Japanese Imperial Army took place half a century ago. They have ruled that no individuals have the right to claim against a state even if they claim violations of international law. Many judgements dismissed the claims on the grounds that postwar reparation is a political question and should be resolved politically or legislatively in the National Parliament (Diet).
The Japanese Government has also adhered to the view that the issue of reparations was resolved by the San Francisco Peace Treaty between Japan and the Allied states, and other bilateral treaties, and that it will not accept responsibility since unlimited claims might follow if it does
so. It also claims that it has carried out its moral obligations by supporting a private fund with government resources.

The Japanese Public Prosectors Office has not accepted the accusations of victims of wartime gender violence, claiming that the charges lacked specificity.

I would like to point out that sensible Japanese people are expecting the People’s Tribunal to duly examine the reasons by which the government, courts, and the Public Prosectors have dismissed the requests of the victims of wartime gender violence, and to reach a judgment with justice.

Concerning the system of “comfort women” to be examined at this People’s Tribunal, the Japanese government claims that, while admitting its involvement, it has insufficient information about whether the system involved “forced” conscription. If this Tribunal is going to make charges against the Japanese government despite these defences, the Tribunal should examine thoughtfully the extent and nature of the involvement of the former government of Japan as to the establishment of “comfort station;” find facts and list strong evidence; and apply solid laws.

The historic significance of this People’s Tribunal is to establish common understanding among people all over the world that “wartime gender violence” is a grave violation of human rights and a war crime. In closing, I would like to say that the principle that wartime gender violence - including the system of “comfort women” by the Japanese Imperial Army - constitutes an inhuman violation of international law must be established by this Tribunal.